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1911

# STATE OF MICHIGAN

LAWS RELATING TO

## HIGHWAYS AND BRIDGES

WITH BLANK FORMS.

COMPILED UNDER THE SUPERVISION OF

FREDERICK C. MARTINDALE

SECRETARY OF STATE

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STATE OF MICHIGAN *Laws, etc.*

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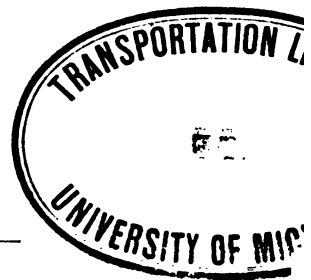
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NOTE.—The numbers in parentheses, ( ), are compiler's sections and are consecutive throughout the book. The notes used refer to the compiler's sections. The character / is used in citing Michigan cases, to avoid the repetition of Mich. Annotated with Supreme Court decisions to and including the 165th Mich. report.

## GENERAL HIGHWAY LAW.

An Act to revise, consolidate and add to the laws relating to the establishment, opening, improvement, maintenance and use of the public highways and private roads, the condemnation of property and gravel therefor; the building, repairing and preservation of bridges; setting and protecting shade trees, drainage, cutting weeds and brush within this State, and providing for the election and defining the powers, duties and compensation of State, county, township and district highway officials.

[Act 283, P. A. 1909.]

### *The People of the State of Michigan enact:*

(1) SECTION 1. Public highways and private roads may be established, opened, improved and maintained within this State under the provisions of this act, and the counties, townships, cities, villages and districts of this State shall possess the authority herein prescribed for the building, repairing and preservation of bridges and culverts; the draining of highways, cutting of weeds and brush in the improvement of highways and the duties of State, county, township, city, village and district highway officials shall be as defined in this act.

Highways,  
etc., author-  
ity for.

HIGHWAYS: Ways must be either public or private; there is no intermediate species of way for any purpose of passage.—Tillman v. People, 12 / 401. A highway is a public passage for all.—People v. Beaubien, 2 Doug. 285. It is a way over which all the people of the State have a common and an equal right to travel, and which they have a common or at least a general, interest to keep unobstructed.—People v. Jackson, 7 / 446. A street is made for the passage of persons and property, and the law cannot define what exclusive means of transportation and passage shall be used.—Macomber v. Nichols, 34 / 219. The rights of travelers on a public highway are mutual and co-ordinate.—Pigott v. Engle, 60 / 228. We have no instance, in our local institutions, of the laying out of ways, except by the persons chosen in the community that is burdened, either alone or as representing them in the county or State.—Drain Com'r v. Baxter, 57 / 131.

## CHAPTER I.

### LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS.

(2) SECTION 1. Public highways shall not be less than four rods in width, except when laid out and established in the manner hereinafter prescribed, and they may be laid out, altered or discontinued under the provisions of this chapter:

Width, how  
laid out, dis-  
continued,  
etc.

- Application.** First, By the commissioner of highways of any township, within his township, upon the written application of seven or more freeholders of such township;
- Adjoining townships, joint action.** Second, By the joint action of the commissioners of highways of adjoining townships, on the line between such townships, on the written application of seven or more freeholders of each township, addressed to the commissioner of either township;
- Concurrent action with cities.** Third, By the concurrent action of the commissioner of highways of any township and the municipal authority of any adjoining city or village having, by law, jurisdiction in laying out streets or highways, on the line between such township and such city or village, on the written application of seven or more freeholders of each township, city or village;
- Section lines.** Fourth, Commissioners of highways shall also have power to lay out and establish highways on section lines, through uninclosed and unimproved lands, without the application required by the first subdivision of this section.

**APPLICATION:** An application by freeholders of the township is a condition precedent to laying out a highway.—*People v. Township Board*, 3/121; *Roberts v. Highway Commissioners*, 25/23. And the application must state that the applicants are freeholders of the township.—*Wilson v. Township Board*, 87/240.

**DISCONTINUING:** Highway commissioners have authority to discontinue such roads as come within the exercise of their official duty without the intervention of a jury, but not state or territorial roads.—*Goldsmith v. Highway Commissioner*, 15/347. A highway may be vacated by non-user (see section 23), and where a highway is vacated conditionally, it is not re-established by the suspension of the conditional occupation.—*Cooper v. Detroit*, 42/584. Discontinuing highways by non-user and establishing highways and town line roads by user. See sec. 27 and notes.

**TOWNSHIP LINE ROAD:** Proceedings for laying out a township line road must be taken jointly by the highway commissioners, and such action by one commissioner is void.—*Brewer v. Gerow*, 83/250. See section 11.

**FOUR RODS:** This is not a limitation as to width, and does not operate to restrict to such width.—*Brown v. Twp. Board*, 109/557. The use by the public of a portion of a strip of land claimed to be a public way does not of necessity, either in city or county, determine the public right to extend over four rods in width.—*Detroit City v. Myers*, 152/666.

**RIGHTS OF ABUTTING OWNER:** A township, in constructing an embankment for a highway, has no right to so construct it as to cause the deposit of earth in a pond of a land owner or upon his land.—*Schneider v. Brown Twp.*, 142/46.

- Application, what to contain.** (3) **SEC. 2.** In applications for laying out or altering a highway, the route along which the road is proposed to be laid, or the extent to which its route is proposed to be changed, shall be described in general terms, and where the application is for the alteration or discontinuance of a road, such road may be described by any name by which it is known, and if the discontinuance of only a portion of any road is asked for, such portion shall be specified.

**LAYING OUT AND DISCONTINUING:** Proceedings to open one highway and discontinue another cannot be combined; only one proceeding can be taken at a time, and every road must be opened or closed on its own merits.—*Shue v. Highway Commissioner*, 41/638. Void proceedings by commissioners discontinuing a highway are not a bar to regular ones taken to widen it to the statutory width; which latter action is not premature by reason of the pendency of certiorari proceedings. In which the invalidity of such discontinuance proceedings is established.—*Weber v. Stagra*, 75/32. Highway commissioners and township boards have no authority to act for the mere purpose of settling boundaries, and cannot properly disturb any possession with that object. The location of a highway according to the original survey is generally of no consequence where abutting owners have held continued occupancy for twenty-five years.—*Shue v. Highway Commissioner*, 41/638.

(4) SEC. 3. In case of an application under the first sub-division of section one of this chapter, the commissioner shall, within five days after receiving the same, issue a written notice, stating the object of such application, and appointing a time and place of hearing, which notice shall be served by the commissioner or by some other competent person, on the owners or occupants of lands through or adjoining which it is proposed to lay out, alter or discontinue such road, either personally or by a copy left at the residence of each owner or occupant, at least ten days before the time of hearing; and if no person shall reside upon any such lands, and the owner thereof shall not reside in the county in which said lands are situated, such notice to owners of such non-resident land shall be served by posting up the same in three public places in the township ten days before the time of hearing. Notice shall be served upon railroad companies by leaving a copy thereof with the agent in charge of any ticket or freight office of the company operating such railroad on the line thereof.

Notice of  
occupant,  
serving of,  
etc.

On R. R.  
companies.

**PUBLICATION AND SERVICE OF NOTICE:** A delay of over a month after receiving the application is fatal to the proceedings.—*Sharpshooters Ass'n v. High. Com'r*, 34/36. Where the notice sufficiently states the starting point and width, the use of the words "varying so far as is necessary to find suitable grounds for making a good and substantial road" will not vitiate the legality of the highway so far as it actually follows the survey lines.—*Shepherd v. Gates*, 50/495. Service on the attorney of a railroad company is not authorized by statute.—*D. M. & T. R. R. Co. v. Detroit*, 49/47. Service on freight agent.—*Truax v. Sterling*, 74/160. The return of service should show upon what particular persons the notice was served, and whether served personally or by copy left at residence; also should show the particular places where the notices were posted.—*People v. Highway Commissioners*, 14/528. Sufficiency of notice.—*Weber v. Stagra*, 75/32. Where all the land to be taken belonged to persons residing on the property, and notice was personally served on appellant, it was unnecessary to post the notices required by this section; and the return to the writ of certiorari containing a proof of personal service within the proper time, complies with the requirement of the statute.—*Gorham v. Johnson*, 157/433.

**WHO ENTITLED TO NOTICE:** All owners and occupants through whose lands the highway is proposed to be laid out are entitled to the statutory notice.—*Names v. Highway Commissioner*, 30/491; *Sherman v. Peterson*, 91/480. Failure to serve notice upon the occupant, a tenant of the owner of a life estate is fatal to the proceedings.—*Welch v. Hodge*, 94/493. The owners of a parcel of land not fronting upon any highway, and whose only outlet is a private way two rods wide, belonging to him, and extending therefrom to a public highway, is entitled to notice of proceedings to discontinue such highway, as much as if his whole parcel abutted upon it.—*Phillips v. Highway Commissioner*, 35/15. And where discontinuance directly affects the convenience of access or leaves the way to a land owner's house a cul de sac he is directly interested in the proceedings and entitled to notice.—*Goss v. Highway Commissioners*, 63/608; *Bauman v. Detroit*, 58/444; *Kimball v. Homan*, 74/703. An occupant of land traversed by a highway with reference to which his houses, wells, barns and orchards have been located, must have notice of proposed discontinuance of said highway.—*Curry v. Place*, 99/525. Where land has been occupied and held adversely for 18 years by one claiming to be the owner, it is not necessary to serve notice on others claiming an interest.—*Nedow v. Porter*, 122/456. A party who is not notified of highway proceedings can lose nothing by a failure to appeal to the township board.—*Names v. Highway Commissioner*, 30/491. Where a party appears without notice and proceeds without objection, want of notice is waived.—*Sharpshooters Association v. Highway Commissioners*, 34/36. Notice to life tenant of land.—*Hatt v. Twp. Board*, 144/266.

**TEN DAYS NOTICE:** All persons entitled to notice of the meeting to determine the necessity of laying out, altering or discontinuing a highway must have ten full days notice.—*Saller v. Township Board*, 67/422; *Price v. Stagra*, 68/17; *Dixon v. Highway Commissioner*, 75/225; *Coquard v. Boehmer*, 81/445; *Cox v. Highway Commissioner*, 83/193. And this excludes the day of service and the day of hearing.—*Platt v. Highway Commissioners*, 38/247.

**PROOF OF NOTICE:** Proceedings to lay out, alter or discontinue a highway will not be sustained unless the highway commissioner's report and the record shows that the statutory notice of the proceedings was given.—*Van Auken v. Highway Commissioner*, 27/414; *Moetter v. Highway Commissioner*, 39/726; *Gray v. Highway Commissioners*, 40/165; *Nelsen v.*

Wakefield, 43/435; Blodgett v. Whaley, 47/469; Goss v. Highway Commissioner, 63/608.

A written statement by one of the commissioners without date, of the service of notice on owners and occupants, which contains no description of the notice, or any date in regard to the time of service, is not sufficient proof of service of notice. There should be sworn evidence in writing of the service made and filed with the board.—Sharpshooters Association v. Highway Commissioners, 34/37. The recital in the determination of the board that the statutory notice was given is not sufficient; proof is not established from such recital.—Dupont v. High. Com'rs, 28/362. Posting in a public place.—Anderson v. LaGrange Township, 2/187.

ALTERING: There is nothing in the present law of this State forbidding the alteration of a highway on account of its long continued use.—Weber v. Ryers, 82/117.

PLACE OF HEARING: The failure of a highway commissioner to meet at the place appointed in his notice to land owners, to view the premises and ascertain and determine the necessity of laying out a highway, ousts him of jurisdiction.—Barlow v. High. Com'r, 39/726.

See section 27 as to discontinuance of State roads.

Affidavit attached to notice.

(5) SEC. 4. Upon the service of the notice required by the last preceding section, and before any further proceedings shall be had, the commissioner, or other person by whom the service was made, shall make and annex to such notice, or a copy thereof, an affidavit stating the time and manner of service, whether personally or by posting, or both, and if upon a railroad company, the fact of such service and upon whom, and such notice and affidavit shall be attached to the application, and the whole shall be present with the commissioner at the time of hearing upon the application.

AFFIDAVIT: The affidavit of service of notice by the highway commissioner of the time and place for determining the necessity of laying out a highway is in the nature of a legal process, and must show that the commissioner obtained jurisdiction to proceed to the hearing.—Dupont v. Com'r, 28/362; Names v. Com'rs, 30/490; Ass'n v. Com'rs, 34/36; Truax v. Sterling, 74/160. Being the legal evidence that notice has been given, it is indispensable and must be in due form. It should name the persons served with notice, and whether served personally or by copy; and if served by posting, the places where posted should be stated.—People v. Highway Com'rs, 14/528. Proof of service is a condition precedent to the further action of the commissioners.—Van Auken v. High. Com'rs, 27/414; Goss v. High. Com'rs, 63/609. And filing an affidavit of such service two days after making the order is invalid.—Goss v. High. Com'rs, 63/608. See citations under section 4.

To view premises, appraise damages, etc.

(6) SEC. 5. The commissioner shall, at the time appointed, proceed to view the premises described in the application and notice, and to ascertain and determine the necessity for laying out, altering, or discontinuing a highway pursuant to such application, and to appraise the damage on account thereof, if any is claimed, and he may in his discretion adjourn the hearing from time to time, not to exceed twenty days: Provided, That in case a highway shall be laid out parallel to and within one-half mile of any already existing highway, the damages upon any lands taken therefor shall not be estimated at less than the value of such land unless by the assent of the owner of such lands: Provided further, That the highway commissioner shall not appropriate a sum of money to exceed one hundred dollars in laying out or improving any highway, or in building or repairing any bridge, without the concurrence, by resolution, of the township board of the township in which such tax is levied.

Proviso, parallel highway.

Further proviso.

Boards of supervisors have exclusive jurisdiction in laying out, altering or discontinuing State roads.—Goldsmith v. Com'r, 15/347.

TAKING PRIVATE PROPERTY: Taking lands of a citizen for a public

highway is taking property for the use and benefit of the public within the meaning of Art. 13, Sec. 2, Constitution.—*People v. Kimball*, 4/95; *Truax v. Sterling*, 74/160. The term "taking" should not be used in an unreasonable or narrow sense, but should include cases where the value of property is destroyed or injured, or where the owner is excluded from its enjoyment or from any of its appurtenances.—*Pearsall v. Supervisors*, 74/559. And if the public take any action which becomes necessary to subserve public use and valuable rights of individuals are thereby interfered with and damaged or destroyed, he is entitled to the compensation which the constitution gives therefore, and such damage or destruction must be regarded as a taking.—*Id.* The necessity for taking must be found to exist.—*Grand Rapids v. G. R. & I. Ry. Co.*, 58/641; and the return must distinctly state such finding.—*Truax v. Sterling*, 74/160.

**DAMAGES:** The adequacy of the compensation awarded by a highway commissioner for land taken for highway purposes is reviewable only by an appeal to the township board.—*Weber v. Ryers*, 82/177. See also, *Weber v. Stagra*, 75/36; *Brown v. Twp. Board*, 109/557. A township is not liable for interest on damages appraised for laying out a highway.—*Anderson v. Twp. Bd.*, 2/188.

**ADJOURNMENT:** An adjournment without fixing the time and place is fatal.—*Dixon v. High. Com'r*, 75/226. So is an adjournment beyond the time fixed by statute.—*Wilson v. High. Com'r*, 80/247. Upon adjournment, action not to be taken until adjourned day.—*Price v. Stagra*, 68/17.

**COMPENSATION:** The benefits to be received by a person whose land is taken are a part of the consideration for the release (or condemnation) of the land and when once vested are as much private property as the land itself, and neither the State nor any of its subordinate agencies, can deprive him of them without notice, a finding of public necessity and compensation ascertained by a constitutional jury.—*Pearsall v. Supervisors*, 74/559. One who petitions for laying out a street which would cross his land is not thereby precluded from claiming compensation therefor.—*Turner v. Stanton*, 42/506. Compensation is a constitutional condition of the taking of private property for a public way, and it can be lawful only when the necessity of the taking, as well as the measure of compensation has been determined in a legal way.—*Sheldon v. Kalamazoo*, 24/383. A private way cannot be changed into a public highway without compensation to the owner of the land over which it runs; and the fact that the owner had allowed the public to use it, cannot be allowed to reduce the amount of compensation.—*Ayers v. Richards*, 38/214; 41/680.

**LAYING OUT HIGHWAYS:** An order of a highway commissioner to lay out a highway beginning at a certain point "running nearly in a north-westerly direction near where the travel is now seeking to get the best route" to another specific point is void for the uncertainty in the description.—*Blodgett v. Whaley*, 47/469. Proceedings to open a street across the land of a railroad company where held invalid where the company was not named in the proceedings and did not appear, even though damages were awarded to it for the land taken.—*D. M. & T. R. R. Co. v. Detroit*, 49/47. Void proceedings by a commissioner, discontinuing a highway are not a bar to regular ones taken to widen it to the statutory width.—*Weber v. Stagra*, 75/32. Proceedings to discontinue a highway and lay out a new one and build a bridge cannot be united in one proceeding.—*Cox v. Com'r of Highways*, 83/193; nor proceedings to open one highway and discontinue another be combined. Only one proceeding can be taken at a time and every road must be opened and closed on its own merits.—*Shue v. Highway Com'r*, 41/638. A railroad company cannot claim as damages for the crossing of its tracks and sidetracks by a street the full value of the parcels of land crossed.—*Grand Rapids v. Bennett*, 106/528. But are entitled as a part of damages to cost of erecting and maintaining safety gates, or towers, or employment of flagmen.—*Id.* Also expense of cattle guards, fencing and other outlay to complete the approach, beside the cost of maintaining them.—*C. & G. T. R. R. Co. v. Hough*, 61/507. A statute imposing this expense upon the railroad company is in conflict with the constitutional provisions, forbidding the taking of private property without "just compensation."—*Id.* Where a highway is laid out parallel to and within one-half mile of an existing highway the damages awarded to the owner of lands taken cannot be estimated at less than their value for general farming purposes, unless by his assent, which fact must appear by the return of the commissioner.—*Truax v. Sterling*, 74/160.

(7) SEC. 6. Within five days after final determination upon any application for laying out, altering or discontinuing any highway, the commissioner shall file a full record and return of his doings in the premises with the township clerk. Such record, in addition to the minutes of the doings of the commissioner and his final determination, shall contain the copy of the application and notice, with the proof of service as provided in section four of this chapter, and, except in case of the discontinuance of a highway, the record shall also embrace a plat or map of the road, with the minutes of the

Commissioners return.



survey signed by the surveyor, and the commissioner's award of damages, if any, and to whom payable, if known, all of which shall be signed by the commissioner and recorded by the township clerk.

**RECORD AND RETURN:** The record of proceedings to establish and lay out, or discontinue a highway must show that all the steps necessary to the validity of the proceedings were taken.—*People v. Scio*, 3/121; *Mead v. High. Com'r's*, 16/63; *Van Auken v. High. Com'r's*, 27/414; *Schroeder v. Village of Onekama*, 95/25. And a recital to that effect in the commissioner's return is not sufficient.—*Id.* The return must show (a) the date of the application, (b) the names of the land owners and others entitled to notice, (c) that the damage allowed such owners, respectively, was the value of the land for farming purposes, (d) an adjudication of a public necessity for laying out the road and for taking the land affected thereby for such purposes.—*Cowing v. Ripley*, 76/65. The proceedings must show affirmatively the requirements of the statute, and the jurisdiction of the court.—*Price v. Stagra*, 68/17. The failure to show in the return that the statutory notice was served is fatal to the proceedings.—*Van Auken v. High. Com'r*, 27/415; *Pegler v. High. Com'r*, 34/359; *Moetter v. High. Com'r*, 39/726. And a certificate that they had "given notice according to law" is not sufficient.—*Van Auken v. High. Com'r*, 27/415. A showing of notice of a meeting to be held April 25 will not uphold a meeting held May 11, in the absence of any showing of notice of such latter meeting, or that it was held as an adjourned meeting.—*Pegler v. High. Com'r*, 34/359. The failure to show that notice was served upon one of the occupants of the land affected is fatal to the validity of the proceedings.—*Wilson v. Township Board*, 87/240. The proceedings are defective if the report does not show that notice of the application therefor and of a hearing upon it had been given to the parties interested.—*Moetter v. High. Com'r*, 39/726. And the report must show when the hearing took place.—*Id.* The return must show affirmatively that the commissioner viewed the premises, ascertained and determined the necessity of his action.—*Truax v. Sterling*, 74/160; *Cox v. High. Com'r*, 83/193; *Furman v. Furman*, 86/391. Where the commissioner has gone out of office it is incompetent for them to make any addition or amendment to a return of their proceedings already made.—*Mead v. High. Com'r*, 16/63. A commissioner has no authority to determine the facts contained in his return. They must be shown to have been proven before a jury.—*Ayres v. Richards*, 38/214; 41/680. See *Page v. Boehmer*, 154/693. The report of a highway commissioner establishing a highway is not deficient for failing to give the date of receiving the petition filed therefor, if the dates sufficiently appear from the petition itself and the notice served.—*Gorham v. Johnson*, 157/433.

Appeal to  
board.

Meeting.

Notice.

(8) **SEC. 7.** Any person being a freeholder or a holder of lands by homestead right within the township, who may conceive himself aggrieved by the determination of a commissioner in laying out, altering, or discontinuing any highway, or in his award of damages, may, within ten days after such determination, appeal therefrom to the township board. Every such appeal shall be in writing, signed by the appellant, and addressed to the township board, and filed with the township clerk, who shall, as soon as may be after the time limited for taking appeals shall have expired, call a meeting of the township board to consider such appeal. Such clerk shall, at least ten days before the time appointed for such meeting, cause notice in writing of the time and place of such meeting to be served upon the appellant and the commission, or left at their respective places of residence.

**RIGHT OF APPEAL:** A general appeal may be taken from the order of a commissioner of highways laying out a highway.—*Brown v. Township Board*, 87/240. No appeal lies to the township board from the refusal of a highway commissioner to lay out a highway.—*Wilson v. Township Board*, 87/240. The only persons who can seek a review of proceedings to discontinue a highway in whole or in part are the owners and occupants of lands through or adjoining which it is proposed to discontinue the road, which adjacency is confined to the part discontinued.—*Kimball v. Homan*, 74/899. A township board has no power to review the action of a commissioner except on appeal.—*Anderson v. LaGrange Township*, 2/188. An appeal waives previous defects and irregularities.—*Frescott v. Patterson*, 44/526. Award of damages.—*Campau v. Le Blanc*, 127/180. Where the only grievance lies

in the award of damages, the proper remedy is by appeal.—*F. & P. M. R. Co. v. Norton*, 64/249. Members of a board who decided that the highway was a public necessity are disqualified from hearing a second appeal by the same land owner from the decision of the highway commissioner re-establishing said highway, former proceedings having been quashed in the circuit court.—*Locke v. High. Com'r*, 107/831. Review of order dismissing appeal.—*Hartz v. Wayne Circuit Judge*, 164/231.

**NOTICE OF APPEAL:** Notice of an appeal to the township board from the order of the highway commissioner is needful to confer jurisdiction to proceed. And: (1) Such notice cannot be shown by a mere recital in the final order of the board to the effect that due notice had been given.—*Tefft v. Hamtramck*, 38/558. (2) Proceedings of a township board reversing an order extending a highway, were quashed for want of it.—*Id.* (3) Without such notice a writ of certiorari to review proceedings of a highway commissioner will be dismissed with costs.—*Wilder v. Hubbell*, 43/487; *Sanger v. Twp. Board*, 118/20. (4) Without such notice the board acquires no jurisdiction on appeal.—*Tefft v. Hamtramck*, 38/558; *Prescott v. Patterson*, 44/525; *Brassee v. Raymond*, 59/548. A party who is not notified of the proceedings to establish a highway, can lose nothing by a failure to appeal, and where such proceedings are void, the owners of the land appropriated may treat them as such and bring trespass when their occupation is disturbed.—*Names v. Com'r of High.*, 30/490. The fact of notice of a meeting of township boards to review the action of the commissioners is jurisdictional and must appear of record.—*Prescott v. Patterson*, 44/525.

(9) SEC. 8. The township board shall proceed at the time and place specified in the notice to hear the proof and allegations of the parties, and may examine persons on oath in respect to the matter of such appeal. Such decision shall be reduced to writing and signed by the board making the same, and filed in the office of the township clerk, and, together with all other papers relating to such appeal, shall be recorded as part of the record of the road. No commissioner from whose determination an appeal has been taken, and who may be a member of the township board, shall act on such appeal. Any party or parties dissatisfied with the determination of such township board, either as to the value of the property taken or as to the determination upon the necessity for laying out, altering or discontinuing a highway, when the amount involved or damages claimed exceeds the sum of three hundred dollars, may appeal therefrom to the circuit court for the county in which said land is situated, and a return may be compelled and the same proceedings shall be had thereupon, as near as may be, and with a like effect as in cases of appeal from judgments rendered before justices of the peace, and the costs thereon awarded and collected in the circuit court in the same manner. And for the purposes of such hearing in the circuit court and for the taxation of costs, the parties signing the application in the first instance, shall be considered and treated in all respects as the plaintiffs on such trial, and the parties opposing such application, either as to the amount found to be the value of the property, or as to the necessity for laying out, altering or discontinuing such highway, shall be considered and treated in all respects as the defendants on such trial; and on perfecting said appeal the proceedings from which said appeal is taken shall be stayed and no further steps therein shall be taken until the determination or dismissal of said appeal; and the said circuit court shall also have full power and jurisdiction over said proceedings to hear and determine the same and render judgment therein, as if the said proceedings had been originally

Decision of board, where recorded, etc.

Appeal to circuit court.

Jurisdiction of court.

Jury trial.	commenced before the said circuit court. And either party to said proceedings on said appeal shall be entitled to have the issue in such proceedings tried by a jury, as in ordinary
Hearings.	suits in said court. All appeals taken from the determination of such township board to the circuit court, whether taken separately or collectively, shall be heard at the same
Determination.	time and before the same court and jury. The determination and judgment rendered by said circuit court shall apply and be of equal force and effect as to each and all of said plaintiffs
Appeals now pending.	and as to each and all of said defendants as above defined, whether their appeals have been taken separately or collectively. This section shall apply to all appeals now pending or hereafter to be taken, and in cases where separate appeals have been heretofore taken under act number one hundred ninety-five of the public acts of nineteen hundred five to the circuit court from the determination of the township board as to the necessity for laying out, altering or discontinuing any highway, and decisions and determinations have been rendered on such separate appeals which are not in harmony with each other as to such necessity, then in all such cases the determination and judgment first rendered therein by such circuit court shall apply equally and be of full force and effect as to each and all of the plaintiffs and defendants as above defined, whether the defendants have taken their appeals separately or collectively, and the rights of each and all said parties shall be determined by and according to such first determination and judgment of the circuit court, subject to the right of appeal to the supreme court according to law.
When duties of justice performed by clerk.	The duties prescribed to justices of the peace in cases of appeal from judgments rendered before justices of the peace, shall, in cases of appeal under this act, devolve upon and be performed by the township clerk: Provided, That in no event shall any costs be taxed against the township or the township board, nor against the parties signing the application for the laying out of any highway, except such party or parties as actually appeal or defend such appeal.
Proviso, costs.	

**HEARING:** A township board has no power to review the proceedings of the commissioner of highways in laying out and establishing a road except on appeal to them under the statute, nor to review proceedings of the appraisers, except so far as to see that they are not void for want of jurisdiction.—*Anderson v. Twp. Bd.*, 2/187. The action of township boards on appeal from the highway commissioners cannot be sustained if it does not appear that the party injured by it had notice of their meeting, even though the return shows that it was held at his house.—*Prescott v. Patterson*, 44/525. A township board on an appeal from a highway commissioner cannot go beyond the grounds of the appeal and pass on other matters.—*Tefft v. Hamtramck*, 38/588. See *Soller v. Township of Brown*, 67/422; *Weber v. Stagra*, 75/35; *Brown v. Twp. Bd.*, 109/557. A township board sitting to hear an appeal from the action of a highway commissioner in laying out a road has power to adjourn for any reasonable cause to a specified day.—*Van Scoy v. Essex*, 38/615. It is error for a township board to hear an appeal from a highway commissioner when two of the sitting members are financially interested in the result of the appeal.—*Wilson v. Township Board*, 87/240.

**CERTIORARI:** Certiorari to review action of the board on an appeal should be directed to the board and not to the commissioner whose action was appealed from.—*Goodrich v. High. Com'rs*, 1/387; *French v. High. Com'rs* 12/267; *Crawford v. Twp. Bds.*, 22/405.

(10) SEC. 9. In case the determination of the commissioner upon which an appeal is taken be confirmed, or if his award of damages shall not be increased, the appellant shall pay the whole amount of costs of such appeal, such costs to be ascertained and determined by the township board and deducted from the amount of damages awarded; and if there be not sufficient damages from which to pay such costs, the appellant shall be liable for the amount of the same in an action at law.

When appellant to pay costs, how apportioned, etc.

Application in due form having been made to highway commissioners for laying out a road, and they having made an order laying out a part of it only, and the township board on appeal having confirmed their action, the supreme court on quashing these orders on certiorari, refused to award costs, as the township board was acting judicially on an application giving the commissioners jurisdiction.—*People v. Township Board of Springwells*, 12/434. Costs on dismissal of a writ of certiorari were nevertheless allowed to the plaintiffs therein where legal cause therefor existed at the time the writ was taken out.—*Rentz v. Detroit*, 48/544. The township board is not bound by the decision of the commissioner as to the amount of damages awarded, but may increase or diminish the same.—*Brown v. Twp. Bd.*, 109/557.

(11) SEC. 10. In case of application under the second subdivision of section one of this chapter, the commissioner to whom such application is made shall, within five days after receipt thereof, notify the commissioner of the adjoining township, and they shall forthwith jointly appoint a time and place of hearing, which shall not be less than ten nor more than twenty days from and after the receipt of the application. The commissioner of each township shall give the same notice to the owners and occupants of land within his township that commissioners are required to give in case of applications for laying out roads within townships, and like proceedings shall be had, so far as may be, as is required in such cases, and the commissioners shall jointly consider such application and determine as to the necessity for laying out, altering or discontinuing a highway in pursuance thereof. The hearing upon any such application may be adjourned from time to time, not exceeding twenty days, but the officers acting shall in all cases meet at the time and place appointed, or to which an adjournment may be had. The full record in such cases shall be filed, preserved and recorded in the township where the commissioner resides to whom the application was made, and a copy thereof shall be filed and recorded in the township cooperating in like manner as in case of laying out roads in townships. The said township board shall cause to be established and improved a public highway to each and every public school building in any organized school district in every township, and where a highway is already laid out and established, and not improved and made passable to any such public school building, the said board shall cause the same to be so improved and made passable for public use.

Adjoining townships, joint action.

Notice by each commissioner.

Adjournment of hearing.

Proceedings recorded.

Highway to every public school.

Proceedings for laying out a township line road must be taken jointly by the commissioners, and such action by one commissioner is void.—*Brewer v. Gerow*, 83/250. The commissioners acting jointly in laying out any line road may, for good cause, defect the line thereof from the boundary line and may locate such road in the same manner as if located on the boundary

line; when so located, such road shall be deemed a line road.—Bigelow v. Brooks, 119/215. See also notes to section 2.

In case of  
township and  
municipality.

Notices,  
proceedings,  
etc.

Hearing.

Record of  
proceedings.

Allotment of  
maintenance.

Damages.

(12) SEC. 11. In case of application under the third subdivision of section one of this chapter, it shall be the duty of the commissioner of highways of the township and the mayor or president of the adjoining city or village to forthwith jointly appoint a time and place of hearing which shall not be less than ten nor more than twenty days from and after the receipt of the application. The commissioner of highways and the mayor or president of the city or village shall give the same notice to the owners and occupants of land within their respective territory that commissioners are required to give in case of applications for laying out roads within townships, and like proceedings shall be had, so far as may be, as required in such cases, and the commissioner and officer or officers shall jointly consider such application and determine as to the necessity for laying out, altering or discontinuing a highway in pursuance thereof. The hearing upon any such application may be adjourned from time to time, not exceeding twenty days, but the officers acting shall in all cases meet at the time and place appointed, or to which an adjournment may be had. The full record in such cases shall be filed, preserved and recorded in the office of the clerk of the township, city or village making such application and a copy thereof shall be filed and recorded with the proper officer of the city or village so cooperating.

(13) SEC. 12. Whenever a line road shall have been laid out and established pursuant to the two last preceding sections, the officers or authority having jurisdiction in the premises shall forthwith jointly determine as to the time when the same shall be opened and improved, and shall at the same time determine and allot what portion shall be opened, improved and maintained by either of such township, city or village, and such township, city or village shall have all the rights and be subject to all the liabilities, in relation to the part of such road so allotted, as if the same was located wholly in such township, city or village, and the damages which may be assessed in the case, together with the costs and expenses of the proceedings, shall be apportioned by the joint action of such authorities to and paid by the township, city or village on the line between which said line road may be located, in proportion to the benefit to be derived therefrom by such township, city or village.

ALLOTMENT TO TOWNSHIPS: Each township is liable to keep its portion of line road in repairs.—Bridge Co. v. Jasper Township, 68/441; and a verbal agreement of allotment is binding.—Sharp v. Township of Evergreen, 67/443; making each liable for injuries received by a traveler on its portion.—Id. Neither township can legally obligate itself to aid in the erection of a bridge forming a part of that portion of said highway allotted to the other township.—Bridge Co. v. Jasper, 68/441. See also views as to existing contracts between townships concerning township line roads and bridges, prior to repealing or amending acts in *Stitt v. Casterline*, 89/239 and cases cited. A township which undertakes to keep the bridge in repair, on its line between that and another township, in pursuance of an attempted agreement between the adjoining townships to maintain specified divisions of

the highway, is liable for negligence in keeping the bridge repaired.—Hunter v. Township of Dwight, 157/634.

(14) SEC. 13. The commissioners, or commissioner, mayor or president of such city or village acting jointly in laying out any line road may, if they consider it necessary to avoid any obstruction, or for other good cause, deflect the line thereof from the boundary line, and they may locate and establish such road in the same manner as if the line thereof were upon the boundary line; and when so located and established, such road shall be deemed a line road for all the purposes contemplated by this chapter, and the same shall be opened and improved in the same manner and with the same powers, privileges, and liabilities as in case of line roads.

Deflection  
from  
boundary  
line.

(15) SEC. 14. The provisions of this chapter relating to appeals shall apply to the laying out and altering of line roads between townships or between a township and an adjoining city or village, by joint action. Notice of such appeal may be served on the township clerk of either township, or on the township clerk and city or village clerk as the case may be, and the officers receiving such notice of appeal shall, as soon as may be, appoint a time and place of hearing upon such appeal, and shall notify the appellant and the officers whose action is appealed from, of the time and place of such hearing in the same manner that the township clerk is required to notify appeals from the determination of a commissioner of highways, and such appeal shall be considered by the township boards jointly, or by the township board and city or village council jointly, as the case may be, and the same proceedings shall be had thereon, and the record thereof shall be made in the same manner as is provided for in laying out line roads pursuant to sections ten and eleven of this chapter.

Appeals  
between  
townships  
and city.

Notice,  
service of.

Joint con-  
sideration.

Where one feeling himself aggrieved by the action of the highway commissioners in the matter of laying out a road on a township line, had taken advantage of the appropriate remedy by appeal to the township boards there being no showing of peculiar and exceptional circumstances, the court declined to order a writ of certiorari to review the proceedings.—Burt v. High. Com'rs, 32/190.

See notes to sections 8-10.

(16) SEC. 15. No line road which shall have been in use as such for a period of ten years shall be discontinued, except upon the unanimous vote of all the officers or authorities present and acting in the premises, approved, in the case of township roads, by the township board, and in case of line roads, by the township boards, or by the township board and city or village council, as the case may be; and no second application shall be entertained within twelve months, or a third application within two years, for the discontinuance of any such road, unless twice the number of freeholders shall sign the application as is required in the first instance.

Road used  
ten years,  
how dis-  
continued.

SECOND APPLICATION: Proceedings by the commissioner on a second application within one year from that of the first are void.—Sage v. Township Board, 13/462. As to disqualification of members of board to act on "second appeal," see Locke v. High. Com'r, 107/631.

TEN YEARS: A road recognized as a town line road for more than ten

years must, under section 21, be deemed to be such, though proof is lacking that it was established by joint action of the township commissioners.—*Bigelow v. Brooks*, 119/208.

Survey made  
on laying out.

(17) SEC. 16. Whenever a highway shall be laid out or altered, the commissioner, mayor or president of any city or village shall cause an accurate survey to be made of the center line thereof, describing the commencing and terminating points of the same from some established corner of a regular subdivision of a section, or other determinable point. Bearing trees or monuments shall also be noted at such commencement and termination and at each angle along the line of the road when practicable. Whenever a road not on a section, quarter section, or some other regular subdivision line of a section, crosses a section line, the distance from the last preceding angle in such road to such section line shall be noted; also the distance from the point of intersection to the nearest section corner post, quarter post, or meander post on one side of such point, if there be one within one mile, and the premises belonging to any highway shall be a parcel of land not less than two rods wide on each side of the line of survey. When the survey is made, permanent monuments shall be established by the surveyor every eighty rods along the line of such highway.

Permanent monuments.

**SURVEY:** The declaration in an action by a commissioner of highways against the county surveyor for his failure to lay out a quarter section line correctly is not demurrable on the ground that defendant is sued in his individual character while described in his official.—*High. Com'r's v. Beebe*, 55/137. The surveyor is required to do the work properly and correctly.—*Id.* The survey of a road from its commencement to its termination is an entire thing, and a part of the record of such survey giving the course and distance across a particular section only, cannot be read in evidence, without permitting the whole record of the survey to go to the jury.—*Moore v. People*, 2 Doug. 420. Parol evidence of the existence of certain marked trees and monuments not called for in the survey of a road is inadmissible to establish, by these marks and monuments, a line of the road variant from that called for by the courses and distances, by which alone such line is designated in the survey.—*Id.*

Extension of  
street, etc.

(18) SEC. 17. Whenever any public road shall be laid out in any township adjoining any city or village, and on the line with any public street, avenue, or way in such city or village extended, the commissioner is hereby authorized to lay out such public road, or any portion thereof, in width to correspond with such street, avenue or way in such city or village, of which the said public road is an extension, and roads thus situated may be widened under the same proceedings as are provided for laying out, altering and discontinuing highways.

Award of  
damages,  
owner to  
remove  
fences.

(19) SEC. 18. When compensation for any damages that may have been awarded in consequence of laying out or altering any highway shall have been paid or tendered to the persons entitled thereto, pursuant to the provisions of section twenty-four of this chapter, the commissioner may give notice to the owner or occupant of any land through which such highway may have been laid out or altered, and require him, within such time as he shall deem reasonable, not less than sixty days after giving such notice, and after the time when

it shall have been determined to open such highway, to remove his fence or fences, and in case such owner or occupant shall neglect or refuse to remove the same within the time specified in such notice, the commissioner or other proper officer shall have full power, and it shall be their duty to enter, with such aid and assistance as shall be necessary, upon the premises, and remove such fence or fences and open such highway, without delay, except that in townships such removal shall not be required between the first day of May and the first day of September.

Refusal,  
commissioner  
to remove.

Notice given for removal of obstructions.—Hoag v. Boehmer, 162 / 330.

(20) SEC. 19. The highway commissioner shall secure the right of way for any road by gift or purchase from the owners of the land to be crossed by such road; such right of way shall be acquired by a release duly executed by the owner or owners of the lands and shall be taken in the name of the township wherein the same is located, acknowledged and witnessed as is now provided for the acknowledging and witnessing of deeds, and recorded in the office of the register of deeds of the county before any highway money shall be expended in opening such road. Whenever any owner or owners of land shall give the same or any part thereof for highway purposes and shall give a release of the same, if a road shall be opened and worked thereon within four years thereafter, the person or persons giving such deed, or those claiming under him or them, shall be precluded from having any action to recover possession of such land or any compensation therefor, so long as the same shall be used as a highway.

Right of  
way, how  
and by whom  
secured.

Release, not  
to recover  
possession.

DEDICATION: In determining whether there has been a dedication, all the acts of the owner bearing upon the question are to be considered together. One act may be explained or qualified by another. A dedication cannot be made without an intent to dedicate. If the owner of land do such acts as show unequivocally an intent to dedicate his land to the public for a highway, such dedication, if properly accepted will make the land dedicated a public highway without reference to any particular period of time.—People v. Jones, 6 / 176; Alton v. Meeuwenberg, 108 / 629. The conduct of an abutting owner in consenting to a survey to fix the line of the highway; his promise to remove his fences as encroaching thereon; their subsequent removal by the highway commissioners after notice to him, and his admission that their claim was right, were held admissible in evidence in an action against the commissioners for removing the fence, as showing a dedication not by parol but by present unequivocal acts.—McMillan v. McCormick, 38 / 693. Where a public way was claimed as dedicated by certain plats, and also by acts in pais, and it appeared that the owners of the premises had always occupied the locus as private property, and excluded the public therefrom.—Held, that the right to the way must depend upon the plats alone, and could not be claimed unless the plats showed an intention to give it.—Cook v. Hillsdale, 7 / 115. By the express dedication of a strip of land of designated width to the public as a highway, any implication of the dedication of a wider strip is precluded.—Bedard v. Simons, 160 / 545.

ACCEPTANCE: A grant of land, or dedication must be accepted before it can take effect, and although acceptance may be presumed when the grant is beneficial, there can be no conclusive presumption that a grant of land for a public way is so. It may be a burden rather than a benefit.—Wayne County v. Miller, 31 / 447. In case of a city street the acceptance should be manifested by some act of the authorities.—People v. Jones, 6 / 177. Yet the intent to dedicate being clear, acceptance is implied from the user, and improvements paid for by assessments on the land of abutting owners.—Nichols v. Furniture Co., 100 / 230. Public user alone, when sufficiently general and long continued, will constitute an acceptance of a county road.—Adams v. Iron Cliffs Co., 78 / 271. Marking out a street on a village plat does not necessarily make the space a public way, unless the public authorities accept it as such.—Buskirk v. Strickland, 47 / 389. Where a citizen offers on certain conditions to open a street across his land for the public use, the ac-



ceptance of the offer by the proper authorities is a sufficient declaration of its necessity as a public improvement, if such a declaration is needed.—*Long v. Mayor*, 39/323. Acceptance is necessary before indictment will lie for obstruction.—*People v. Beaubien*, 2 Doug. 257. And indictment against the proprietor for obstructing it, is not of itself a sufficient acceptance.—*Id.* Acceptance may be refused by direct act of the authorities.—*Plumer v. Johnston*, 63/165.

MISCELLANEOUS: One who has opened a street which the public authorities have accepted and improved, has no right, after much time has gone by, and rights have grown up, to shut it up again on the ground that the authorities have not performed an oral condition which was made with them at the time of opening the street; but he may have a remedy at law for breach of condition.—*Port Huron v. Chadwick*, 52/320. The county acquires no beneficial ownership of land dedicated to the public use as a street, and cannot dispose of it or control its use or enter into actual possession of it; and when the easement is ended its right ceases.—*Bay County v. Bradley*, 39/163. Private land owners can get no better right of way in a street than that offered to the public for acceptance.—*Plumer v. Johnston*, 63/166, citing *Tapert v. D., G. H. & M. Ry Co.*, 50/271.

Public  
highways,  
what deemed.

(21) SEC. 20. All highways regularly established in pursuance of existing laws, all roads that shall have been used as such for ten years or more, whether any record or other proof exists that they were ever established as highways or not, and all roads which have been or which may hereafter be laid out and not recorded, and which shall have been used eight years or more, shall be deemed public highways, subject to be altered or discontinued according to the provisions of this act. All highways that are or that may become such by time and use, shall be four rods in width, and where they are situated on section or quarter section lines, such lines shall be the center of such roads, and the land belonging to such roads shall be two rods in width on each side of such lines.

Width,  
center.

HIGHWAYS BY USER: Highways by user are based upon the implied dedication of the land by the owner.—*Kruger v. Le Blanc*, 70/76. The way must be one over which all the people of the State have a common and equal right to travel.—*People v. Jackson*, 7/432; and has no application to mere private ways.—*Green v. Bellitz*, 34/513. Public user alone, when sufficiently general and continued the statutory period, will constitute a highway by user, and an acceptance of the same.—*Adams v. Iron Cliffs Co.*, 78/271; *Village of Grandville v. Jenison*, 84/54. See *Neal v. Gilmore*, 141/519. But see *Irving v. Ford*, 65/520. Where the width of a highway was in dispute, it was held that that part in excess of the legal dedication was not converted to the public use, by merely passing over the land for any length of time. Also, where the owner, pursuant to an agreement with the authorities, allowed his fence to be moved in two rods until the highway proper could be repaired, and allowed to remain ten years under renewed promises to repair held not to create a highway by user.—*Homer Township v. Ricker*, 79/551. A mere permissive use of a private road by the general public, however long continued, will not make it a public highway.—*Stickley v. Sodus Twp.*, 131/510. The statute does not fix the number who must travel upon a highway in order to determine whether it exists by user, it must be used by the public and the public are all who have occasion to use it.—*Grandville v. Jenison*, 84/55. In a dispute as between a survey record and the use of a margin of a lake as highway, the survey record being more certain, must control.—*Hoffman v. Port Huron*, 101/417. Partial acceptance of an offered grant of land for the purposes of a public street, will, with the consent or acquiescence of the donor, establish the street to the extent of public occupation but no further.—*County of Wayne v. Miller*, 31/447. Whether a highway lawfully exists over private property, is a question which cannot be settled against the owner without the right to a trial in due course of law, and a municipal board can not decide upon it so as to bind him, and acts at its peril in attempting it. Such municipal action is not judicial; and if it were it would be void, because an interested party cannot be a judge in his own cause.—*Sheldon v. Kalamazoo*, 24/383. Long practical acquiescence as between the public and a private owner as to the true line of the latter's fences along the highway will bind the public.—*Gregory v. Knight*, 50/61. In a dedication to the public use of street, a strip reserved for sidewalk, shrubbery and ornamental purposes, becomes a portion of the street by user.—*Dickerson v. City of Detroit*, 99/498. A road that can be advantageously used by the public only by trespassing on private property is not properly a public highway.—*Ayres v. Richards*, 41/680. A decree recognizing a road as at least a private way when it was really public need not be disturbed if the parties are satisfied and the public authorities are not parties to the suit,

as it cannot destroy any public rights.—*Nye v. Clark*, 55/600. Evidence that a logging road was opened in 1872 across unlocated public land and used continuously until 1905 as such and by the general public, that it was kept in repair chiefly by private parties using it to haul forest products over, and that township officers expended money upon it, is sufficient to go to the jury on the question of highway by user, though land was entered in 1902 by defendant as a homestead.—*Parkey v. Galloway*, 147/693. In order that a way customarily used by the public may become a public way by user, the public must not only use it as a thoroughfare, but the implied dedication must be accepted by the public authorities and the way taken in charge and maintained as other highways.—*Chapman v. Sault Ste. Marie*, 146/24.

**TEN YEARS' USE:** It makes no difference in computing the time, that part of the 20 years had run when the statute took effect, and part of it afterwards.—*Bumpus v. Miller*, 4/159. A road that has been used and recognized for twenty-one years and had previously been laid out, surveyed, fenced and worked by the highway commissioners as a town line road, is properly treated as a public highway even though it has been allowed to grow up in brush outside of the actual roadway.—*Nye v. Clark*, 55/600. User of land for the statutory period as a public highway conclusively establishes dedication of the land for that purpose.—*Campau v. City of Detroit*, 104/560. A street that has been established and recognized for more than ten years cannot be shifted unless according to charter and statutory conditions.—*Pratt v. Lewis*, 39/7.

**EIGHT YEARS:** The use of a highway for eight years after its discontinuance makes it a public highway, by virtue of its subsequent user.—*Curry v. Place*, 99/555. An unrecorded road laid out and constructed by a township and actually used for eight years becomes a public highway, and its non-user for two years, in the absence of any proceedings to discontinue it, will not entitle a railroad company to exclude the public by fencing in its right of way at that point.—*McNamara v. Ry. Co.*, 95/545; *Bigelow v. Brooks*, 119/216.

**STATUTORY WIDTH:** Highways by user are based upon the implied dedication of the land by the owner, and where there is nothing to indicate a contrary intention, the presumption is that the owner intended to dedicate the land to the full legal width, which contrary intention is indicated by the owner's placing fences or other means, within the statutory width during the time the statute is running, in which case the public is only entitled to claim the part which it has been permitted to use.—*Kruger v. LeBlanc*, 70/76. A highway by user need not necessarily be of the statutory width, but it becomes such to the width and extent used.—*Savings Bank v. Stockwell*, 84/587. This statute fixing the width at four rods of highway by user, cannot change vested rights.—*Coleman v. F. & P. M. R. R. Co.*, 64/160. The use by the public of a portion of a strip of land claimed to be a public way does not, of necessity, either in city or country, determine the public right to extend over four rods in width.—*Detroit City v. Myers*, 152/666. Due process of law.—*Watz v. Sunderland*, 147/96.

**PUBLIC USE:** The rights of the public in a highway will not be lost, by anything short of an actual abandonment of the use by which they secured it.—*Village of Grandville v. Jenison*, 84/54. The listing of the land for taxes and payment thereof by the owner does not affect the rights of the public in the land.—*Ellsworth v. Grand Rapids*, 27/251; *Campau v. Detroit*, 104/560. The mere making and recording of a plat upon a paper by the owner of the land, ignoring the existence of a road in actual use is not such an interference with the public user of such road as to affect the limitation prescribed by the statute.—*Ellsworth v. Grand Rapids*, 27/251. A right of way that is too indefinite for a determinate description cannot be established and protected by a court of chancery.—*Fox v. Price*, 50/500. When the facts are such as would show that a land owner had obtained a prescriptive right against the public, so as to reduce the width of the road, to less than four rods, the jury should find where the highway by user was.—*McKay v. Doty*, 63/581. Where the center line of a highway is identical with the quarter section line, the limit of the highway is two rods on each side of the quarter line, but where the traveled track is considerable distance from the quarter line, the highway boundary would be two rods from the center of the traveled track.—*McKay v. Doty*, 63/581. A dedication of a highway when not expressly, or impliedly restricted by the owner is not confined to the beaten track, but includes the four rods in width as provided by statute.—*Bumpus v. Miller*, 4/159. The reservation of land as a private way negatives its dedication to the public.—*Detroit v. Myers*, 152/666.

**MISCELLANEOUS:** A private way cannot be converted into a public highway, without compensation to the owners of the lands over which it runs.—*Ayres v. Richards*, 41/680. There is nothing in the present law of this state which forbids the altering of a highway on account of its long continued use.—*Weber v. Ryers*, 82/177, 179; citing 65/638; 68/17. This statute, designed to cure defects in the laying out and recording of highways, has no application to mere private ways but is confined to public highways.—*Green v. Belitz*, 34/512. Where any part of a highway has been extinguished and turned to other uses, it cannot be renewed without the same methods of dedication or user which would turn other lands into public ways.—*Cooper v. Detroit*, 42/584. A legally laid out and established highway does not lose its character as such by the erection and maintenance of a gate across it, for a time, by an adjoining land owner, nor is he or his grantees thereby stopped from claiming it as a public highway.—*Van Brunt v. Lynch*, 76/455.

**NUISANCE:** An unauthorized obstruction across a public street is a pub-

lic nuisance which any citizen desiring to travel along the street may abate.—Neal v. Gilmore, 141 / 519.

Defective records.

(22) SEC. 21. The commissioner of highways of each township shall cause all roads in his township coming within the purview of the last preceding section, the records of which may be defective, and all others, the records of which are defective, to be ascertained, described and entered of record in the township clerk's office.

The survey of a road as provided by this section, for the purpose of ascertaining and describing it in order that it may be recorded is not the laying out of the highway, and the certificate of such survey is inadmissible to prove that the highway described had been laid out by the commissioners.—Parker v. People, 22 / 93. See also Bumpus v. Miller, 4 / 159. Laying out without application, etc.—Names v. High. Com'rs, 30 / 491.

Discontinued highway.

(23) SEC. 22. Every public highway already laid out, or hereafter to be laid out, no part of which shall have been opened and worked within four years after the time of its being so laid out, shall cease to be a road for any purpose whatever.

So held where a street in the city of Detroit was appropriated to other use.—Cooper v. City of Detroit, 42 / 584. The fact that no part of a highway was opened and worked within four years after being laid out, does not prevent the establishment of the highway by user under section 21, but would merely require a user of ten years instead of eight.—Neal v. Gilmore, 141 / 519.

Considered in laying out new.

(24) SEC. 23. If any discontinued highway shall be upon lands through which a new highway shall be laid out, the same may be taken into consideration in estimating the damages sustained by the owner of such lands; and in like manner the benefits accruing to owners of lands by reason of laying out or altering any highway shall be taken into consideration.

The proper municipal authorities can discontinue a portion of a street, if they could do so otherwise in consideration of the opening of another street and outlet by a private citizen whose interests are affected in both cases.—Bauman v. Detroit, 58 / 444.

Damages awarded before highway opened.

Owner unknown.

Damages to be assessed.

(25) SEC. 24. When any damages may be awarded under the provisions of this chapter in consequence of laying out or altering any highway, before such highway shall be opened, the amount of such damages shall be paid or tendered to the person or persons entitled thereto, or an order on the treasurer of the proper township, city or village, for the amount of such damages, shall be delivered or tendered to such person or persons, and if the owner of any lands upon which any damages may be awarded be unknown, and such lands be not occupied, an order for the amount thereof shall be drawn upon the township treasurer and deposited with the township clerk, payable to the owner of the description of land upon which such damages were awarded, describing such lands by their legal subdivision in such order, which order shall be held by the township clerk to be delivered to the owner of such lands when called for or otherwise lawfully demanded. The amount of any such damages shall be assessed, levied and collected upon the taxable property of the township, city

or village chargeable therewith, in the same manner as other taxes are levied and collected.

**DAMAGES:** Where a road has been formerly established and the damages appraised, and return made and certified according to the statute, such damages are made a township charge.—*Anderson v. LaGrange Township*, 2 / 187 (see also *Marathon v. Oregon*, 8 / 380), the amount is settled by the appraisal, and it then becomes the duty of the township board to draw their order accordingly.—*Id.* But interest is not allowed on the amount awarded.—*Id.* The order must name the payee so as to show on its face the person to whom it is payable.—*Lull v. Curry*, 10 / 397; see also *Anderson v. LaGrange Township*, 2 / 189. Where the proceedings in laying out a highway are not legal, and the road had not been opened, the township board was justified in refusing to make an order for the payment of claims presented for damages.—*Chubb v. Township Board*, 3 / 121; but where the jury found the taking necessary, and assessed the damages and the road was opened; under a statute requiring the finding to be certified by the justice; it was held that the town could not resist payment on that ground.—*Holcomb v. Township of Lowell*, 9 / 145. Payment of damages.—*People v. Zilwaukee Twp. Bd.*, 10 / 274. As to compensation for private property taken for public use, see Art. XIII, constitution.

(26) SEC. 25. In any case where the legislature has granted or shall grant power to a board of special commissioners to lay out any road, and such commissioners shall not, for the term of one year after the time of their appointment, have laid out and proceeded to open such road, it shall be lawful for commissioners of highways to lay out and open highways upon the route thereof, in the same manner as if no special commissioners had been authorized.

Special commissioners, neglect of, to lay out highway.

(27) SEC. 26. All State roads which are now or may hereafter be laid out in this State shall be under the care of the commissioners of highways of the several townships through which the same shall pass, and subject to be by them opened and kept in repair in the same manner as township roads, but such State roads shall be altered or discontinued only by the boards of supervisors of the counties in which they may be situated.

State roads, care of, altering of, etc.

For State roads within corporate limits of city or village see section 276 of this compilation.

**STATE ROADS:** State roads are laid out, altered or discontinued by order of board of supervisors. See section 228 and notes. And highway commissioners cannot usurp this privilege.—*Goldsmith v. Highway Commissioners*, 15 / 347. But this fact does not interfere with or diminish the duty of a township to keep such roads and the bridges upon them in good repair.—*Delta Lumber Company v. Board of Supervisors*, 71 / 572. And failure to do so creates a liability the same as for neglect of roads laid out by highway commissioners.—*Id.* By the settled policy of this State the care and supervision of all highways and bridges is in the hands of the highway commissioners of the several townships respectively, in which they are situated.—*Delta Lumber Co. v. Board of Supervisors*, 71 / 572; *Pen. Savings Bank v. Ward*, 118 / 91. And application for mandamus to compel the board of supervisors to repair State road bridges was dismissed.—*Id.* State roads are only such as have been laid out by legislative authority.—*Davies v. Supervisors*, 89 / 295. The legislature has control over State and territorial roads, and may authorize the construction of street railways over them.—*Smith v. Jackson, etc., Traction Co.*, 137 / 20. The highway commissioner has nothing whatever to do with the granting of franchises of street railways, his sole power is to see that the roads are opened and kept in repair in the same manner as township roads.—*Id.*, 26.

(28) SEC. 27. In laying out any highway under the provisions of this act where the same crosses the track or right of way of any railroad company, the same proceedings in relation to acquiring the right of way for such highway across the land of such railroad company, including the right of way

In case highway crosses R. R. tracks.

Service of papers.	across the tracks, shall be had as in other cases. Service of all papers shall be made in the same manner upon such railroad company as is provided by law for the service of summons on railroad companies. Such railroad company shall be entitled to receive the actual value of the use of the land taken for such highway, and when the compensation awarded such railroad company for such damages as above provided shall have been paid or tendered to any person in charge of the ticket or freight offices of such company entitled thereto and situated nearest the said highway crossing, pursuant to the provisions of section twenty-four of this chapter, then and in such case such right of way shall be deemed to be fully acquired and secured for the public. After the right of way has been acquired, the railroad commission of this State, shall, on application of the highway commissioner, furnish plans and specifications of approaches, cattleguards, fences and other safeguards as may be necessary to make such crossing reasonably safe for the use of the public and all business of such railroad, and thereupon, upon receipt of such plans and specifications, the highway commissioner shall notify in writing such railroad company to furnish a competent superintendent or trackman to superintend the construction of such crossing, and such township shall pay to such railroad company a per diem compensation for such superintendent, not exceeding two dollars per day for the time actually and necessarily spent in superintending such construction, and such highway commissioner is authorized to issue orders for the payment of such superintendent. In case such railroad company refuses or neglects to furnish a superintendent for the construction of such crossing as aforesaid, then and in such case it shall be the duty of the railroad commission to appoint some suitable person, who shall receive the compensation aforesaid from the said township, to oversee and superintend the construction of such crossing. If any railroad company shall attempt to obstruct the opening of any such highway after such right of way has been secured and payment of damages herein provided for has been made and tendered as herein provided, by any agent, officer or employee or any other person, the said railroad company shall be liable to a penalty of twenty-five dollars for each day the opening or construction of such highway is delayed or impeded, for the benefit of the township; and the supervisor may sue for and recover such penalty in any of the courts of this State in the name of the township; and in addition thereto, if any officer, agent or employee, or person acting for and in the interest of any railroad company shall annoy, hinder or obstruct any highway commissioner, contractor or person employed by him or them in opening such highway or constructing any grades, approaches, cattleguards, crossings or fences required to complete, or for the use of such highway and the public, such officer, agent, employee or person shall be deemed
Right of way, when deemed acquired.	
Railroad commission to furnish plans, etc.	
Construction of crossing.	
Neglect to furnish superintendent.	
Obstruction by R. R. company.	
Obstruction by employee.	

guilty of a misdemeanor, and on conviction thereof shall be fined not to exceed one hundred dollars, or imprisoned in the county jail not to exceed ninety days, or both such fine and imprisonment in the discretion of the court. All material and labor used in the construction of such crossing shall be furnished by the township highway commissioner. Material.

The law of 1881 which required the railroad company to construct and maintain highway crossings was adversely construed in *People v. L. S. & M. S. Ry. Co.*, 52/277; this law was amended in 1883, requiring the same proceedings in obtaining the right of way as in other cases and allowing such companies just compensation for the land taken, but requiring such company, at its own expense, to open, construct and maintain such highway. This requirement was also unconstitutional in *C. & G. T. Ry. Co. v. Hough*, 61/507, as being in conflict with the provisions forbidding the taking of private property without just compensation. See also *Grand Rapids v. G. R. & I. R. R. Co.*, 58/642, where it was held that the damages include the expense entailed by the crossing, and may involve outlays for making it safe. Where a new highway is opened across a railroad, the township and not the railroad company, is charged with the duty of keeping in safe condition for public travel that portion of the highway lying within the railroad right of way, but not being a part of the crossing itself nor of the approaches thereto. *Gage v. Twp. of Pittsfield*, 120/437. See also *Wetherbee v. Mich. Cen. R. Co.*, 122/1.

Note.—It was affirmed in *People v. L. S. & M. S. Ry. Co.*, 52/278, that "the right of property to governmental protection does not depend upon whether its owner is a natural or artificial person;" this right seems to be recognized in the existing law in making the municipality laying out the road liable for all damages incurred thereby.—[Compiler.]

(29) SEC. 28. The commissioner of highways of any township of this State lying along the line of any other state shall, upon a petition of seven or more freeholders, as is provided in the first subdivision of section one of this chapter, have power, and it shall be his duty to meet with any officer or officers of such adjoining state intrusted with the power of laying out or discontinuing highways, and such commissioner may lay out, open and construct a highway of any width, which added to the width on the other side of the State line, will make a highway which shall not exceed four rods nor be less than three rods in width, and the same shall be surveyed and recorded as in other cases. State line highway.

(30) SEC. 29. An itemized statement of the expenses of any survey authorized by this chapter, certified by the commissioner or proper city or village officer, may be presented to the board of the proper township, city or village at any meeting thereof, and the amount of such expenses, if allowed by such board, shall be paid from the general fund of the township, city or village, and a tax shall be spread to reimburse said fund. Payment for surveys.

(31) SEC. 30. The commissioner of highways of any township may, in his discretion, but with the consent and approval of the township board of the township in which such highway is proposed to be established, duly entered of record, lay out a public highway in any case where it is deemed expedient, of any width less than four rods but not less than three rods, said highways to be of uniform width between points intersecting other highways. When may lay out less than 4 rods wide.

## CHAPTER II.

## TAXES FOR HIGHWAY PURPOSES.

Maintenance. (32) SECTION 1. The highways in every organized township in this State shall be laid out, improved and maintained by two money taxes; one tax shall be known as the road repair tax, and shall be assessed on all property in the township outside of the limits of incorporated villages, which tax shall not exceed fifty cents on each one hundred dollars valuation according to the assessment roll of the last preceding year, except in townships with an assessed valuation of less than two hundred thousand dollars where the tax shall not exceed one dollar on each one hundred dollars valuation, according to the assessment roll of the last preceding year; and the other tax shall be known as the highway improvement tax and shall be assessed on all taxable property in the township, including that within the limits of incorporated villages, which tax shall not exceed fifty cents on each one hundred dollars valuation, according to the assessment roll for the last preceding year, except in townships with an assessed valuation of less than two hundred thousand dollars where the tax shall not exceed one dollar on each one hundred dollars valuation, according to the assessment roll of the last preceding year.

Road repair tax, assessment, amount, etc.

Highway improvement tax.

Pearl v. Benton Twp., 136 / 697; Perrizo v. Stephenson Twp., 141 / 167.

Annual report, what to state, etc. (33) SEC. 2. The commissioner of highways in each township shall render to the township board at the annual meeting thereof in each year an account in writing, stating:

First, The amount of road repair tax received by him during the preceding year, a summary of the expenditures from that fund, the amount of outstanding liabilities, if any, and the amount of such road repair fund, if any, over and above such expenditures and liabilities;

Second, The amount of highway improvement tax received by him during the preceding year, a summary of the expenditures from that fund, a statement of the permanent improvements made on roads and bridges and of the condition of the roads and bridges so improved, the amount of outstanding liabilities, if any, and the amount of the highway improvement fund, if any, over and above such expenditures and liabilities;

Third, The amount of all other moneys received for highway purposes with a statement of the application thereof;

Fourth, An estimate of the amount of road repair tax which, in his judgment, should be assessed for the ensuing year, not exceeding the amount named in section one of this chapter;

Fifth, The permanent improvements which, in his judgment, should be made on the roads and bridges during the next ensuing year and the amount of highway improvement tax which should be levied for that purpose, not to exceed the amount named in section one of this chapter.

**ANNUAL ACCOUNT:** The report of the commissioner, in the absence of evidence to the contrary, will be assumed to be in due form.—*Lake Superior Ship Canal Co. v. Thompson Township*, 56/493. The report should not call for a greater appropriation than authorized by the statute.—*Hosler v. Higgins Township*, 45/342. For neglect of commissioner to report, see *Thayer Lumber Co. v. Twp. of Springfield*, 131/14.

**ASSESSMENT:** The assessment of highway taxes for roads that are in contemplation, but are not yet laid out, is not necessarily illegal.—*Sawyer-Goodwin Co. v. Township of Crystal Falls*, 56/597. A special highway tax exceeding the amount allowed by law, and assessed for a highway not legally laid out, and without any showing in the township records that it had been voted, is void.—*F. & P. M. Ry. Co. v. Auditor General*, 41/635. The money tax authorized to be raised for highway purposes should be spread according to the assessed valuation of the preceding year.—*Mills v. Richland Twp.*, 72/100.

See *Longyear v. Auditor General*, 72/415; *Peninsular Savings Bank v. Ward*, 118/87; *Diamond Match Co. v. Ontonagon*, 140/185; *Perrizo v. Stephenson Twp.*, 141/170.

As to report of highway commissioner relative to the drainage of highways, see section 221.

(34) SEC. 3. The township board shall cause such statement to be presented at the next annual township meeting, but a failure to render such statement or to present the same to the township meeting shall not affect the right of the electors of the township to vote at such meeting the amount of road repair tax and road improvement tax to be assessed, or of the township board to fix and determine the same as provided elsewhere in this act.

Board to  
present  
statement.

**HIGHWAY TAXES:** The labor and money tax which the electors of a township are authorized to vote is not intended to meet anything but the ordinary improvement of the highways and bridges of the township during the year.—*Longyear v. Auditor General*, 72/415; *Michigan Land and Iron Co. v. L'Anse Township*, 63/700. The failure of the commissioner of highways to estimate and report the amount of money to be raised for highway purposes will not deprive the electors of the right to vote upon that question.—*Turnbull v. Township of Alpena*, 74/621. For amount of tax to be voted as authorized by statute, see *Peninsular Sav. Bank v. Ward*, 118/87. Neglect of electors to vote a money tax for highway purposes.—*Thayer Lumber Co. v. Springfield Twp.*, 131/15. See *McFarlan v. Cedar Creek Twp.*, 93/558.

(35) SEC. 4. At the annual township meeting held in each organized township the electors shall, by a majority of those present and voting, who do not reside in any incorporated village, determine the amount of road repair tax to be raised for the ensuing year, and at the said meeting the electors shall also, by a majority of all those present and voting, including residents of incorporated villages in such organized township, determine the amount of highway improvement tax to be raised for the ensuing year.

When to  
determine  
amount of  
road repair,  
etc., tax.

(36) SEC. 5. If the electors present at any annual township meeting shall neglect or refuse to vote any road repair tax or highway improvement tax, the township board and the township highway commissioner, acting jointly, shall order to be levied such a sum or sums, for either or both of these funds, as may appear to them necessary and advisable, not to exceed the amounts named in section one of this chapter.

Refusal,  
commissioner  
and board  
to levy.



**TAX LEVY:** Where the township board imposes a highway tax they represent the town meeting in doing so and are confined to the same subjects of taxation.—*Ryerson v. Township of Laketon*, 52/510. The records of the board must affirmatively show neglect or refusal of the voters to vote a sufficient sum for township expenses.—*Harding v. Bader*, 75/316; *Gamble v. Aud. Gen.*, 78/302; *Aud. Gen. v. D., S. S. & A. R. Co.*, 116/122; *Aud. Gen. v. Sparrow*, 122/593. See also *Thayer Lumber Co. v. Springfield Twp.*, 131/13. Where the township board in levying highway taxes, exempts the property in a particular village in the township, the levy is void.—*Aud. Gen. v. D., S. S. & A. R. Co.*, 116/122. See *Ferrizo v. Stephenson Twp.*, 141/167.

Supervisor  
when to levy.

(37) SEC. 6. A certified copy of the record of the proceedings of the township meeting or township board, fixing and determining the amount of such highway taxes, shall be transmitted by the township clerk to the supervisor of his township on or before the first day of October in each year and such taxes shall be levied and collected in the same manner as moneys for general township purposes are levied and collected. The taxes so levied shall be carried out in two separate columns in the tax roll, one as the road repair tax and the other as the highway improvement tax, and the township treasurer shall keep separate accounts of the same.

How carried  
on roll.

When may  
borrow in  
anticipation  
of tax.

(38) SEC. 7. When the amount of either or both of said taxes shall have been determined by the township meeting or the township board, the township board shall have the power and authority to borrow an amount not exceeding three-fourths of the tax determined upon for the ensuing year, for the purpose of paying for labor, material, tools or machinery, or other expenses in connection with the laying out, building, repairing or improving of highways and bridges of the township, and the interest on any moneys so borrowed shall be paid from the road fund for which the money was borrowed.

Exigency,  
expenditure,  
limit, tax for.

(39) SEC. 8. Whenever in the opinion of the highway commissioner and township board, an exigency shall be deemed to exist requiring the repairing, building or rebuilding of any road or bridge, the township board may authorize the highway commissioner to repair, build or rebuild such road or bridge, at a cost not exceeding one thousand dollars, and shall order a tax spread to meet the same.

Road  
districts,  
overseer.

Proviso,  
when unin-  
corporated  
village  
separate  
district.

(40) SEC. 9. The commissioner, acting with the township board, may divide the township into one or more road districts in each surveyed township, in each of which districts an overseer of highways shall be elected: Provided, That the repair tax shall be expended or worked in the road district where assessed. The commissioner and township board of any township in which may be located an unincorporated village, or in the event that such unincorporated village is located in more than one township, the commissioners and township boards of the townships to be affected thereby, may create of the territory embraced by such unincorporated village a separate road district, for which road district there shall be elected an overseer in the same manner as other overseers are elected in the township. And in case such unincorporated village is located in more than one township the over-

seer of each township shall have supervision over that territory embraced in such unincorporated village as may be located in his township. Such overseers shall from time to time report to the commissioner any defects in the highways within their respective districts, and shall, when required by the commissioner, supervise the working and repairing of roads, and the building and repairing of roads, and the building and repairing of bridges therein. The overseer or overseers of any road district comprised of an unincorporated village as in this section provided, may, upon the written application of a majority of the taxpayers residing therein, authorize not less than one-fourth and such additional part of the road repair tax assessed therein, and not necessary for the repairs of highways therein, and not necessary for the direction of the overseer or overseers of such district in the construction, repairs and improvements of sidewalks within the limits of such unincorporated village; and for such purpose said overseer or overseers, when such unincorporated village may be located in more than one county, may also from time to time, by writing signed by him or them and filed with the clerk of such township or townships, authorize such additional portion of the repair tax of such village as in his or their judgment is not needed for the annual repairs of the highways therein, to be anticipated for one or more years, not exceeding three, and thereupon any person or corporation, resident of or owning property within such village, and assessed for highway repair tax in the district within which such district is situated, may, in the year so designated in such order, anticipate his, her or its assessment for road repair tax for such time as he, she or it may see fit within the limits so prescribed by the overseer of that part of the road district in which such repairs shall be made, and it shall be the duty of such overseer to give to such person or corporation a certificate signed by him, showing the amount of road repair tax paid by such person or corporation; and in each succeeding year, upon presentation of such certificate, such person or corporation shall be allowed and credited by the overseer of highways of that part of the district in which such repairs or the construction of sidewalks shall have been made, with the payment of the road repair tax so assessed to him, her or it for such year, until such credit shall equal the amount of the road repair tax so stated in said certificate to have been anticipated, and such overseer shall endorse thereon a statement signed by him showing such credit or allowance. The supervision of road work and the repair of highways and bridges shall be under the charge of the overseers, subject to such directory control of the township board and highway commissioner as is herein prescribed: Provided further, That upon complaint in writing to the township board by any ten or more resident taxpayers that the road repair fund is being unequally and unjustly applied, or work improperly per-

Overseers' report, duties.

Sidewalks in certain road district.

In case district in more than one county.

Anticipation of tax.

Certificate of overseer.

Overseer to credit tax.

Supervision of road work.

Proviso.

	formed, the township board may direct the expenditures of such road repair fund or the manner of performing such work: Provided further, That not to exceed twenty-five dollars shall be expended by the highway commissioner in any one year for tools or machinery, without the consent of the township board: Provided further, That not exceeding one hundred dollars shall be expended from the road repair fund on any one mile of highway; unless otherwise directed by the township board.
Further proviso.	
Further proviso.	
Highway improvement fund, how expended.	(41) SEC. 10. The highway improvement fund shall be expended by the township highway commissioner, under the direction of the township board, in laying out, building and permanently improving or repairing highways and bridges and in the employment of labor, purchasing of materials, tools or machinery to be used therefor. The commissioner of highways, under the direction of the township board, may contract for such tools or road machinery as they may deem advisable, to be paid for in not to exceed four years' time, but in no one year shall the payment made thereon, exceed one-fourth the amount of the allowable highway improvement tax. All highways in any incorporated village which were established and laid out by the township before the incorporation of such village, and now in use as a street or highway, shall be treated the same as other highways in the township and shall share in said highway improvement fund, and shall be expended under the direction of the highway commissioner and town boards.
Tools, contract for payment.	
Previously established highway, how treated.	
Commissioner to repair roads, etc.	(42) SEC. 11. It shall be the duty of the highway commissioner to see that all highways and bridges are kept in reasonable repair, and in condition reasonably safe and fit for public travel. He shall employ and direct the employment of such labor as he may deem necessary and advisable, and all disbursements from the highway improvement fund or the road repair fund shall be made upon his warrant, drawn on the township treasurer and countersigned by the township clerk.
Warrants.	
Persons assessed given preference.	(43) SEC. 12. In the performance of all road repair work those assessed for highway taxes in each respective district where such work is to be done, shall be given preference in the performance of such work. Work to be paid for from the road repair fund shall be completed on or before the first day of September in each year: Provided, That not exceeding one-quarter of the amount of such tax may be kept by the highway commissioner for later necessary repairs, or for plowing, rolling or removing snow in winter.
Proviso.	
Overseer to have charge, etc., in case of vacancy.	(44) SEC. 13. If the highway commissioner be unable to take charge of the work on highways and bridges because of sickness, absence or any other reason, or in case of a vacancy in the office of township highway commissioner through death, resignation or otherwise, the overseer of highways residing in the same road district as the former highway commissioner

resided shall have charge and supervision of all work, and shall act in the place and stead of the highway commissioner, until a new highway commissioner shall be appointed or elected, and shall have all the powers and duties of such township highway commissioner, and in such case warrants drawn by him and countersigned by the township clerk shall be paid by the township treasurer.

(45) SEC. 14. The township highway commissioner shall be entitled to such compensation as the township board may decide, which compensation shall be not less than two dollars per day nor more than two dollars and fifty cents per day for the time actually employed, and the overseer of highways shall be entitled to such compensation as the township board may decide, which compensation shall be not less than one dollar and fifty cents per day nor more than two dollars per day for the time actually employed. The compensation of the highway commissioner shall be paid from the general or other fund of the township, in the same manner as other township officers are paid. The compensation of the overseer of highways shall be paid from the road repair fund on approval of the township board.

Compensation of commissioner and overseer.

How paid.

See sections 318 and 319.

(46) SEC. 15. All work hereafter done upon roads and bridges, except such work as may be required for repairs, shall have in view the permanent improvement of such roads and bridges. Before beginning such permanent improvement on any highway, the commissioner shall cause a survey of the highway to be made by a competent surveyor, for the purpose of establishing both its location and grade, and a profile of such survey shall be made. Grade stakes shall be set along the side or sides of the highway, such grade lines being referenced to permanent objects along the highway at frequent intervals. The profile shall also show in figures as well as by lines, the cuts and fills required to bring the road surface to the established grade. Such plan and profile shall be referred to the township board for its approval and adoption. If, in the judgment of such board, the grades as proposed are not practicable and advisable, new grades shall be indicated on the profile, which grades shall be agreeable to said board. The plan and profile as submitted, or amended as above provided, shall be adopted by resolution of such township board, which fact shall be certified by the township clerk on the plans, giving the date of such adoption, after which they shall be filed with the township clerk. Thereafter all parts of such roads shall be graded and turnpiked in accordance with the grades thus established before the same shall be graveled or macadamized, and it shall be unlawful for the highway commissioner to issue any orders for permanent improvement work, for the township clerk to countersign such orders, or the treasurer to pay same, unless the survey has been made,

Permanent improvement, proceedings, etc.

Grade stakes.

New grades.

Adoption of plan.

	the profile made and adopted, and the work done in accordance therewith, and any one of the officials that shall do what is prohibited in this paragraph knowingly, shall be guilty of a misdemeanor and shall be liable to a fine of not less than ten dollars and not more than twenty-five dollars, and in default of payment may be confined in the county jail not less than ten days, nor more than twenty-five days, in the discretion of the court. The highway shall be constructed in such manner as to form a turnpike sufficiently crowning to shed water, with gutters or ditches adequate for drainage. The width of the turnpike shall be not less than eighteen feet between side ditches and all bridges shall have a clear roadway of at least sixteen feet, and shall be capable of carrying a ten ton moving load.
Construction.	
Width of turnpike.	
Repair after one year.	(47) SEC. 16. After any such turnpike shall be used for one year, the ruts shall be filled, after which it shall be graveled or macadamized in cases where gravel or crushed stone can conveniently be obtained. If it be desired to put on gravel or stone when grading has been completed, the turnpike shall first be thoroughly compacted. In graveling or macadamizing any highway, the gravel or stone shall be placed on the center thereof, in a mass not less than nine feet wide, and not less than six nor more than twelve inches deep, in the discretion of the highway commissioner.
Placing of gravel.	
Continuation of work.	(48) SEC. 17. The work specified in sections fifteen and sixteen of this chapter shall be continued until all the highways in the township are made equal to the requirements of said sections.
Improvements at owners' expense.	(49) SEC. 18. Whenever any person or persons interested in any highway, wish to improve the same by grading, graveling, macadamizing or paving they may do so at their own expense, and in such manner as may be approved by the highway commissioner; and when sufficient means shall be provided by such party or parties to make the improvement desired, the highway commissioner shall furnish a grade for such highway and direct the manner in which it shall be graded, and his per diem while so employed shall be paid by the township as though the township were making the improvement. The highway commissioner shall, if requested to do so by the party or parties making the improvement, supervise and direct the graveling, macadamizing or paving, and his per diem while so employed shall be paid by the township as though the township were making the improvement: Provided, That no highway commissioner or any other town officer shall be awarded any contract for any labor to be performed under the provisions of this act, and any such contract, so awarded, shall be void.
Commissioner, when to supervise.	
Proviso, contract.	
Materials, procuring of.	(50) SEC. 19. Materials for making improvements under any provision of this act, may be taken from any property set aside for highway purposes in the township: Provided, however, That no such materials shall be taken within eight feet
Proviso.	

of either line of the highway, except where necessary to maintain the established grade, without the consent of the owner of the adjoining land.

### CHAPTER III.

#### GOOD ROADS DISTRICT.

(51) SECTION 1. Any two or more organized townships, or any one or more townships, and one or more villages, or one or more townships and one or more cities, or any combination of townships, villages or cities lying contiguous in any county, are hereby authorized to form themselves into a district to be known as a good roads district, and such district shall operate under the provisions of the county road law, except as herein otherwise provided; but should any county in which a good roads district be formed, afterwards adopt the county roads system, such good roads district shall not be thereby dissolved, but may continue under the provisions of this act unless it be dissolved by a majority vote of the electors of such district voting on the proposition of dissolving such district. But if by such majority vote of the electors of such district it is decided to dissolve such district, and come under the county road system so adopted in the county, then in such case such district shall be forthwith dissolved, excepting for the purpose of completing work then under contract. In case such district shall become so dissolved and come under the county roads system any funds of the good roads district remaining in the county treasury, or thereafter paid therein, to the credit of such good roads district fund shall be returned to the highway funds of the different townships, villages and cities composing such good roads district in the proportion in which the good roads district tax was paid by them for the last preceding year.

Townships, cities, etc., may form.

Adoption of county roads system not to dissolve road district.

When may dissolve.

Funds, returning of.

(52) SEC. 2. On petition of not less than ten per centum of the resident freeholders of each organized township, incorporated village and city as shown by the tax rolls of the preceding year, which is desirous of joining in a good roads district, the board of supervisors may submit the question of adopting such system, to a vote of the electors of such townships, villages and cities, so petitioning, not later than at the next general election. Such vote may be taken at a special election called for that purpose, or at a general election, and the following form or resolution shall be sufficient for submitting the question, viz.: Resolved, That the question of adopting the good roads district system be submitted to a vote of the electors of the (townships of....., villages of..... cities of.....) of the county of .....at (the general or special election) to be held on the.....day of..... nineteen hun-

Proceedings for joining in good roads district.

Form.

	dred. .... If a special election is to be called, a clause added to the resolution in form following shall be sufficient for that purpose, viz.: And a special election is hereby called to be held in the several townships and wards of said county as above set forth, on the day last aforesaid, for the purpose of taking such vote.
Notice given by county clerk.	(53) SEC. 3. After the adoption of the resolution by the board of supervisors, the county clerk shall give notice thereof to the several townships, incorporated villages and cities petitioning to form such district, as shown by the tax roll of the preceding year, in the form of a handbill, to be posted in three or more public places in each township and ward, at least two weeks before the time of such election, and by publication in a newspaper or newspapers having a general circulation throughout such district. Ballots shall be prepared and distributed by the same officers as is provided by law for general elections. At the time mentioned in such resolution such election shall be held and the vote taken accordingly:
Ballots.	Provided, That no township, village or city, not petitioning to form and become a part of such road district, shall vote upon the question of adopting such system.
Proviso.	(54) SEC. 4. If upon the canvass of the votes cast on such question at such election, it shall appear that a majority voting thereon, is in favor thereof, then the good roads system shall be considered as adopted in such district, and thereupon the provisions of this act and of the county road law, shall be and become operative in such district.
When considered adopted.	(55) SEC. 5. In each township, incorporated village and city belonging to such district, shall be elected one good roads commissioner, which commissioners shall constitute a board of good roads commissioners, who will have the same rights, powers, obligations and duties in the good roads district as county road commissioners under the county road law. The terms of office of such good roads commissioners shall be two years, and their compensation shall be fixed by the board of supervisors. In the first instance, or in case of a vacancy in the office of any good roads commissioner, such office shall be filled by appointment by the township board, village or city council, as the case may be. The county clerk and county treasurer shall officiate the same for the district so formed as is provided by law in case of the adoption of the county road system.
Board of good roads commissioners, who to constitute, etc.	
Vacancy.	(56) SEC. 6. In any county in which a good roads district may be formed it shall be the privilege of any organized township, incorporated village or city, lying contiguous to but not already belonging to such good roads district, to become a part of the same whenever such township, village or city shall so decide by a majority vote of the electors of such township, village or city, voting thereon, at a general or special election. Upon petition of at least ten per centum of the resident freeholders residing in any such township, village or city as
Proceedings for becoming a part of district.	

shown by the tax rolls of the preceding year, it shall be the duty of the township board, village or city council, as the case may be, to provide for the holding of such election, at a date not later than the next general election.

(57) SEC. 7. On or before the first day of October of each year, the said board of good roads commissioners shall determine upon the amount of tax which, in their judgment, shall be raised for such year in the district, which tax shall not exceed two dollars upon each one thousand dollars valuation of said district, according to the assessment roll of the last preceding year. At the annual meeting of the board of supervisors, held in October, the county clerk shall lay such determination before the board of supervisors and the board of supervisors shall pass upon the said determination and decide upon the amount to be raised, which shall not be less than that determined upon by the said board of good roads commissioners, excepting by a two-thirds vote of the members elect of said board of supervisors. After the said board of supervisors shall have decided upon the amount of tax to be raised, the said board of supervisors shall apportion such tax between the several districts, villages and cities of said good roads district, according to their assessed valuation. The supervisors or other assessing officers shall levy and apportion the tax so apportioned to their respective townships, villages and cities, upon the tax rolls of such townships, villages and cities. The tax so assessed shall be collected and paid to the county treasurer to be by him kept in a separate account, and to be paid out only upon the order of said board of good roads commissioners, signed by its chairman and countersigned by the clerk. All moneys belonging to the good roads district shall be expended by the good roads commissioners in the said good roads district exclusively for the purposes mentioned, and provided for under the county road law.

When commissioners to determine tax.

Board of supervisors, duty as to.

Tax, levy and collection.

(58) SEC. 8. No portion of any county now under the provisions of the county road law shall adopt the provisions of this act, and should any county in which a good roads district be formed, afterwards adopt the county road system, such good roads district shall be forthwith dissolved, excepting for the purpose of completing work then under contract. Any funds remaining in the county treasury, or thereafter paid therein, to the credit of the good roads district fund shall be returned to the highway funds of the different townships, villages and cities composing such good roads district in the proportion in which the good roads district tax was paid by them for the last preceding year.

Adoption of county road system abolishes districts.

(59) SEC. 9. The board of supervisors of any county which has adopted or may hereafter adopt the provisions of this act may, upon petition of at least ten per centum of the resident freeholders residing in each of the several townships, incorporated villages and cities in the district, as shown by

Submission of question to abolish.



the tax rolls of the preceding year, submit *the question of rescinding the vote by which it was adopted, and the resolution to submit*, and all proceedings subsequent thereto, shall, as nearly as may be, follow the forms and manner of proceedings provided for voting on the question of adopting the county road system. When any district shall rescind the vote by which it has adopted the good roads district system, this act shall cease to be operative except for the purpose of completing work under contract at the time of such rescission. The funds then remaining in the county treasury or thereafter paid therein to the credit of the district shall be returned to the highway funds as provided in the preceding section. All district roads shall revert to the townships, and all highways and bridges shall thereafter be laid out, built and maintained in all respects as though such district had never adopted the good roads district system: Provided, That the provisions of this chapter shall in nowise operate to repeal act number two hundred sixty-eight of the public acts of nineteen hundred seven, insofar as districts already organized under it are concerned.

Disposition of funds.

Proviso.

## CHAPTER IV.

## COUNTY ROAD LAW.

County road system, submission of question.

Form of resolution.

(60) SECTION 1. On petition of not less than ten per centum of the resident freeholders residing in each of the several organized townships, incorporated villages and cities, of any county, as shown by the tax roll of the preceding year, or upon a majority vote of the members of the board of supervisors, the board of supervisors of such county may submit the question of adopting the county road system to a vote of the electors of such county. The said board of supervisors may submit the question at a general or special election called for that purpose. The following form of resolution shall be sufficient for submitting the question, viz.: Resolved, That the question of adopting the county road system be submitted to a vote of the electors of the county of..... at (the general or special election) to be held on the..... day of..... nineteen hundred..... If a special election is to be called, a clause added to the resolution in form following shall be sufficient for that purpose, viz.: And a special election is hereby called to be held in the several townships and wards of said county on the day last aforesaid, for the purpose of taking such vote.

Constitutional law, see Wayne Co. Road Com'rs v. Auditors, 148 / 255.

Election, when held.

(61) SEC. 2. At least three weeks shall intervene between the adoption of the resolution by the board of supervisors and the time of holding such election. After the adoption of the

resolution by the board of supervisors, the county clerk shall give notice thereof. Such notice shall be addressed to the electors of the county and shall set forth the action of the board of supervisors together with a copy of the resolution, and shall further give notice that said question will be stated upon the ballot to be used at said election, as follows: Shall the county road system be adopted by the county of.....? Said notice may be in the form following, viz.:

Notice.

Form.

To the electors of the county of.....

Notice is hereby given that at a meeting of the board of supervisors of said county, held on the.....day of .....19...., the following resolution was adopted, viz.: (here set forth the resolution).

Notice is further given that said question will be stated on the ballots to be used at said election, as follows: Shall the county road system be adopted by the county of.....?

Dated.....

.....

Clerk of the county of.....

(62) SEC. 3. Said clerk shall cause such notice, printed in the form of a handbill, to be posted in three or more public places in each township and ward of such county, at least two weeks before the time of such election, and also to be published in such newspaper or newspapers published and circulated in said county as the board of supervisors may direct, once in each week for at least two weeks before said election. Proof of the posting and publication of such notice may be made by affidavit of any person or persons knowing the facts and be filed in the office of said clerk and shall be recorded in the records of the proceedings of the board of supervisors. Such affidavit or the record thereof, or a certified copy of such affidavit or the record thereof, shall be prima facie evidence of the facts stated therein. Ballots shall be prepared and distributed by the same officers prescribed by law for general elections. The questions shall be stated on such ballots as follows, viz.: Shall the county road system be adopted by the county of.....? and immediately below and on different lines shall be printed the word "yes" and the word "no." At the time mentioned in such resolution such election shall be held and the vote taken accordingly.

Notice of to be posted and published.

Ballots.

(63) SEC. 4. If upon the canvass of the votes cast at such election it shall appear that the majority is in favor of the adoption thereof, then the county road system shall be considered as adopted in such county, and thereupon the provisions of this act and all other acts relative to such system shall be and become operative in such county.

Adoption.

(64) SEC. 5. All elections which under this act may be held on the first Monday of April shall be considered general elections and shall be held in all cities, wards and townships of the county, except in the county of Wayne. The manner of preparing and distributing the ballots at any general or

April election; how considered, exception.

Conduct of elections.

special election held under this act, the manner of conducting, canvassing, returning and declaring the result, shall be the same as now prescribed by law for other like county elections, except as herein otherwise provided.

County road  
commission-  
ers, election  
of.

(65) SEC. 6. In any county where the county road system shall hereafter be adopted, a board of county road commissioners, not exceeding three in number shall be elected by the people of such county. In the first instance such commissioners shall be appointed by the board of supervisors or elected at a general or special election called for that purpose, as shall be ordered by the board of supervisors. If such commissioners are appointed they shall hold office only until the first day of May following in the year in which a regular session of the legislature is held. If such commissioners are to be elected at a general election, notice thereof, embodying a copy of the resolution of the board of supervisors, giving the number and terms of office of the commissioners to be elected, shall be published by the clerk in the newspaper or newspapers selected by the board of supervisors, as required by section three of this chapter and act; if a special election is called for the election of such commissioners, a like notice shall be given by the clerk, which notice shall be posted and published in such newspapers as required by said section three of this chapter and act. In the month of March in each year thereafter in which a county road commissioner is to be elected, the county clerk shall give notice that a county road commissioner is to be elected at the following election to be held on the first Monday in April, and shall publish the same in a newspaper or newspapers in manner aforesaid: Provided, That in the counties of Wayne and Mason the election of county road commissioners shall be held at the general election on the first Tuesday after the first Monday in November, and the term of office of such county road commissioners shall commence on the first day of May in the year following their election, the notice of election of said county road commissioners in the counties of Wayne and Mason shall be given at the same time notice is given of the general election: Provided further, That the election of county road commissioners, as herein provided, shall not be mandatory in any county which contains more than thirty surveyed townships, either entire or fractional, as determined by the government survey thereof. In such county or counties the board of supervisors, may, by a majority of its members-elect, appoint such county road commissioners.

Election,  
notice of.

Special  
election.

County clerk  
to give notice.

Proviso.

Further  
proviso.

Am. 1911, Act 148.

Oath, bond,  
term, etc.

(66) SEC. 7. Any person elected or appointed county road commissioner shall, within ten days after being notified in writing by the clerk of such county, of his election or appointment, take and subscribe the constitutional oath of office and file the same with the said clerk. Each and every county

road commissioner shall be required to execute and give official bond in such amount as the board of supervisors of such county may determine, the expense of securing such bond, if any, to be paid from the county road fund. The term of office of the first commissioners elected in any county under this act, shall commence immediately upon filing such oath of office, and shall continue as hereinafter provided. The successor to each such commissioner shall be elected in the year in which a regular session of the legislature is held, on the first Monday in April preceding the expiration of his term. They shall hold office for two, four and six years respectively from the said first day of May, and thereafter one commissioner shall be biennially elected for the full term of six years. No member of the board of supervisors shall be eligible to the office of county road commissioner, and such offices shall not be held by the same person at the same time.

Supervisor  
ineligible.

(67) SEC. 8. In case a vacancy shall occur in the office of county road commissioner, the board of supervisors may appoint a commissioner to fill such vacancy, who shall hold office until the first day of May following in the year in which a regular session of the legislature is held. At the general election to be held on the first Monday in April preceding such first day of May, a commissioner shall be elected for the unexpired term of such vacancy. Each commissioner shall hold his office until his successor is elected and qualified. The board of supervisors shall fix the compensation of such commissioners, except in the county of Wayne where the compensation shall be five dollars per diem, for such time as the commissioners shall serve the county in the capacity of county road commissioners.

Supervisors  
to fill  
vacancy.

Term of  
office.  
Compensation.

Am. 1911, Act 148.

(68) SEC. 9. A majority of the members of the board of county road commissioners shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. The board may adopt such rules and regulations for calling and holding meetings and for the transaction of business as they may deem best. They shall annually appoint one of their number chairman to hold during the pleasure of the board. Such board shall be known as the "Board of County Road Commissioners of the county of.....," and by that name may sue and be sued. Process may be served on the chairman or clerk of the board. The clerk of the county shall be clerk of the board of county road commissioners, and shall keep the records and accounts of the board, and preserve its files in the manner directed by the board.

Quorum.

Board, how  
known.

Clerk.

(69) SEC. 10. Neither the clerk nor any member of the board of county road commissioners shall, directly or indirectly, either personally or as a member of any firm or stockholder in any corporation, be pecuniarily interested as contractor or employe in any contract entered into or work

Personal  
interest in  
contract.

Proviso. carried on by or for such board, or in property purchased or sold by or for such board: Provided, however, That this section shall not be construed to prevent the purchase of land for a road, from a member of the board or the clerk thereof. Said board of commissioners may employ such superintendents, engineers, servants and laborers, and purchase such machines, tools, appliances and materials as shall in their judgment be necessary or convenient for the proper carrying on of their work.

May lay out, widen, etc. (70) SEC. 11. Said board of county road commissioners may lay out such new roads within the county as they deem necessary. Such roads shall be not less than four rods wide. Said board may also change the width or the location or straighten the line of any road over which they take jurisdiction. If in the laying out, widening, changing or straightening of any road, it shall become necessary to take private property, the said board shall cause a survey of such proposed road to be made, together with an accurate description of the lands required therefor. Thereupon they shall endeavor to agree with each owner, resident of said county, for the purchase of a right of way over his land included within such description. If they are able to agree with the owner thereof, they may purchase the same and pay therefor out of the funds under their control, and such lands shall then be conveyed to the county for the use and purpose of a road.

Private property, may take.

Wayne Co. Road Com'rs v. Auditors, 148 / 261.

Petition to court, what to contain, etc. (71) SEC. 12. Whenever said board shall be unable to agree with any person interested in any parcel of such land, or such person shall be unknown or a non-resident of the county, or a minor, or an insane or incompetent person, the board may present to the circuit court or probate court of the county a petition, describing the proposed road and each parcel of land necessary therefor which they have been unable to acquire, giving the name of each person interested in each parcel so far as known, and praying for the appointment of three commissioners to determine the necessity of such proposed road, the necessity of taking each such parcel therefor, and to appraise the damages to be paid as compensation for such taking of each parcel for road purposes. The court shall appoint a guardian ad litem for any minor, insane or incompetent person interested in the proceedings. The guardian shall be a resident of the county. Upon the filing of the petition, the court shall make an order fixing a day for the hearing on such petition, which shall be not less than three weeks thereafter. Such order shall recite the names of the persons mentioned in the petition, the descriptions of each parcel of land, and state the purpose of the petition. Such order shall be published once in each week for three successive weeks in some newspaper published and circulated in the county as near as any to the land in question, to be designated by the

Order for hearing.

Service of notice.

court, and notice thereof shall be served on each person named in the petition interested in the land who resides within the county, and upon each such guardian, at least ten days before the day of hearing. Such service may be made personally or by leaving at the place of residence of the person to be served. Proof of publication and service may be made by affidavit of any person or persons having knowledge of the facts. Such proof shall be filed with the court on the day of hearing, and thereupon the court shall have jurisdiction of the subject matter involved in the proceedings and of the parties interested therein.

(72) SEC. 13. On the day of hearing, the court shall hear the parties and appoint three disinterested persons commissioners, herein called court commissioners, whose duty it shall be to determine the necessity of such proposed road and the necessity for taking each parcel of land described in the petition therefor, and if they shall decide that it is necessary, then to appraise the damages to be paid as compensation for the taking of each such parcel therefor. The court [commissioners] commissioner shall be sworn faithfully to discharge their duty. The court shall fix the time and place for the first meeting of such court commissioners, and require their attendance; it may also authorize the court commissioners to adjourn their meeting from time to time not later than a day to be named, and shall fix the time for filing the report of such court commissioners.

Appointment  
of commission-  
ers, duty of.

(73) SEC. 14. The court commissioners shall meet at the time and place ordered by the court. If all do not then appear, a less number may adjourn to a time certain, but no adjournment shall be made to a day later than the time allowed by the court. Such adjournments shall be publicly announced. The court or the clerk thereof may issue writs of subpoena to compel the attendance of witnesses before the court or before the said court commissioners. Either one of such court commissioners may administer oaths to witnesses. The court commissioners, at the time fixed by the court or at the time fixed by adjournment, shall view the premises described in the petition and hear the proofs and allegations of the parties, and render their decision in the premises. They shall report such decision in writing, signed by them or a majority of them, at the time fixed for that purpose. If their decision is that the road is unnecessary or that any part of the land described in the petition is unnecessary to be taken therefor, no further proceedings for the establishment of such road shall be taken for one year thereafter; if the decision is that the proposed road is necessary and that such lands are necessary to be taken therefor, they shall appraise the damages to be paid as compensation to each person interested for each parcel of land.

Meetings.

View  
premises.

Decision, ap-  
praisal, etc.

(74) SEC. 15. The court may, at the time of the filing of the report or at such other time to which it may adjourn the

Court may set  
aside decision,  
amend, etc.

proceedings, on cause shown, set aside the report and refer it back to such court commissioners or appoint other commissioners to retry the questions involved, whereupon such proceedings shall be had as are hereinbefore provided for. The court may permit the amendment of any petition, affidavit, order, report or proceeding filed or had in the premises in such manner as shall be just and proper; it may fill any vacancy that shall occur among the court commissioners; it may permit a defective proceeding to be set aside and other proceedings in compliance with law to be had in place thereof; it may adjourn such proceedings or any part thereof from time to time, and may make all such orders in the premises as may be just and proper to further and accomplish the purpose thereof.

Confirmation  
of report.

(75) SEC. 16. After the court shall confirm the report of the court commissioners, it shall enter an order authorizing the board of county road commissioners to pay the several sums awarded for damages, and the board shall pay the same accordingly. Such payment shall be made in money to the several persons entitled thereto, and if refused, or if there be no person properly authorized to receive the same, it shall be deposited as directed by the court. Upon filing proof of payment or deposit as ordered, the court shall prepare a certificate under its seal, signed by the judge, reciting briefly the proceedings that have been had, giving the names of the parties interested, describing the lands taken for such road, the award of damages therefor and the payment or deposit of the money, and deliver the same to the board of county road commissioners, and thereupon the title to such land shall be deemed vested in the county to be used for road purposes only. Such certificate shall be recorded in the book of deeds in the office of the register of deeds. Such certificate, certificates or the record thereof or a certified copy of such record, shall be prima facie evidence of the facts recited therein, and of title to such lands in the county and of the right of the board of county road commissioners to construct and maintain a road thereon. The court shall fix the compensation of the court commissioners, not to exceed three dollars per day, and determine the amount of necessary expenses incurred in connection with such proceedings which shall be paid by the board of county road commissioners.

Certificate of  
court, to  
whom given,  
filing, etc.

Compensation.

Joint  
county  
road.

(76) SEC. 17. The boards of county road commissioners of adjoining counties may unite in laying out and establishing a county road on or near the line between their counties, and may institute proceedings to acquire the lands for such road, and may thereafter construct and maintain such road at the joint expense of the counties.

Highways  
adopted as  
county roads.

(77) SEC. 18. Any road heretofore laid out, or any part thereof, shall become a county road if the board of county road commissioners shall at any time so determine and in passing through, or on the line between townships and incor-

porated villages, any streets or parts of streets of such village may be adopted as a county road, with consent of the proper authorities of such village or villages. The vote of the county road commissioners in respect to such determination shall be taken by yeas and nays, and shall be entered at large on the records of said board of county road commissioners. Notice of such determination shall be forthwith given by the clerk to the highway commissioner of each township and the highway authorities of each village in which said road or any part thereof is situated, and published in some newspaper printed and circulated in the county, once in each week for three successive weeks. Proof of such service and publication may be made by affidavit by any person knowing the facts, and be filed with the clerk. Such affidavit or the record thereof, or a certified copy of such affidavit or record, shall be prima facie evidence of its contents. After service and publication of such notice, the board of county road commissioners shall have sole and exclusive jurisdiction and control of such road so embraced within such determination, and the township or municipality within which the same is situated shall be relieved from all responsibility therefor. Immediately after laying out or taking control of a road, said board shall give the same a name by which it shall afterwards be known in their proceedings. The board of county road commissioners of any county which has adopted the county road system, are hereby authorized and empowered to, at any time, abandon and discontinue any county road, or any part thereof, by a majority vote. The vote of the county road commissioners in respect to such abandonment and discontinuance, shall be taken and entered, and notice thereof be given, in the same manner as required in this section, in cases in which county roads are adopted. After proceedings to discontinue and abandon have been had, the jurisdiction and control of such road shall revert to the township or municipality within which the same is situated, which, prior to the time of its adoption as a county road, had jurisdiction and control thereof, and the county shall be relieved from the responsibility therefor.

Notice of  
determina-  
tion, etc.

Proof of  
service.

Jurisdiction  
of commis-  
sioners.

Name of road.

Discontin-  
uance of coun-  
ty roads.

(78) Sec. 19. Said board of county road commissioners shall have authority to grade, drain, construct, gravel or macadamize any road under their control, or to place thereon any other form of improvement which in their judgment may be best, and may extend and enlarge such improvements; they shall have authority to construct bridges and culverts on the line of such road, and to repair and maintain the said roads, bridges and culverts; they shall have all the authority in respect to such roads, bridges and culverts which is vested in highway officers in townships. Said board of county road commissioners may maintain in their own name an action for any injury to any county road or to any part of the whole width thereof as laid out and established, or to any of the

Commissioners  
may grade,  
drain, etc.

Action for in-  
jury to road.



Proposals for building, etc.	improvements thereon. All moneys recovered in any such action shall be paid to the county treasurer, and be credited to the county road fund. In all cases involving the expenditure of an amount greater than five hundred dollars for the building, rebuilding or repairing of roads or bridges, the board of county road commissioners shall advertise for sealed proposals for such work. The board shall have the right to reject any and all bids, and may do the work by day labor, purchasing the necessary material and employing the labor therefor: Provided, however, In case the board shall decide to do the work by day labor, the plans and specifications together with all bids received thereon, and the reason, in writing, for not letting the job by contract, shall be filed in the office of the county clerk.
Proviso.	
Determination of county tax.	(79) SEC. 20. On or before the first day of October of each year, said board of county road commissioners shall determine upon the amount of tax which in their judgment should be raised for such year in said county for the purposes aforesaid, specifying and itemizing the roads and parts of roads upon which such moneys are to be expended, stating the amount asked for each of such roads, and shall cause such determination to be entered upon their records. Such tax shall not exceed three dollars on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation does not exceed twenty millions of dollars; such tax shall not exceed two dollars on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation is more than twenty millions of dollars and does not exceed fifty millions of dollars; such tax shall not exceed one dollar on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation is more than fifty millions of dollars and does not exceed one hundred millions of dollars; such tax shall not exceed fifty cents on each one thousand dollars of assessed valuation according to the assessment roll of the last preceding year in counties where such valuation is more than one hundred millions of dollars. At the annual meeting of the board of supervisors held in October, the county clerk shall lay such determination before the board of supervisors and such board of supervisors shall pass upon the said determination, and if a majority of such board of supervisors shall agree therewith, then such tax shall be apportioned among the several townships and cities of said county according to their equalized valuation. If the determination of the board of county road commissioners shall not meet with the approval of a majority of the board of supervisors then the said board of supervisors shall proceed to decide upon the amount of tax to be raised for such year in such county for the purposes aforesaid, and may allow or reject in whole or in part any or all of the
Limit of tax.	
Supervisors to pass upon amount of tax.	

items for the sections of roads thus submitted for its consideration; and it shall not be lawful for such county road commissioners without the consent of such board of supervisors to expend any such moneys upon any other roads than as thus specified. It shall be the duty of the board of supervisors to raise a sufficient tax to keep any county roads or bridges already built in reasonable repair, and in condition reasonably safe and fit for public travel. After the said board of supervisors shall have decided upon the amount of tax to be raised, the said board shall thereupon apportion such tax between the several townships and cities of said county according to their equalized valuation. The supervisors or other assessing officers in such townships and cities shall levy and apportion the taxes so apportioned as provided in this section, to their respective townships and cities, upon the tax rolls of such townships and cities respectively, upon which the county taxes are assessed. The taxes so assessed shall be collected and paid to the county treasurer, the same as other county taxes. All the provisions of law relating to the assessment, levy, collection and return of county taxes and the sale of property delinquent therefor, shall apply to taxes to be raised pursuant to this act. The county treasurer shall keep a separate account of the taxes collected and moneys received under this act, and shall pay the same out only upon the order of such board of county road commissioners and upon warrants signed by the chairman and countersigned by the clerk of the board. In counties having a county auditor, or board of county auditors, the warrants shall pass through the hands of such county auditors and be further countersigned by them, when payment shall be made thereof by the county treasurer. All moneys raised under the provisions of this act shall be expended by such board of county road commissioners exclusively for the purposes herein mentioned.

Supervisors  
to raise tax.Apportion-  
ment.Assessment  
and collection.Duty of  
county  
treasurer.Counties hav-  
ing auditors.

(80) Sec. 21. Said board of county road commissioners shall have no power to contract indebtedness for any amount in excess of the moneys credited to such board and actually in the hands of the county treasurer: Provided, That the board may incur liability upon contracts, after a tax is voted, to an amount not exceeding three-fourths of the said tax. It is hereby made the duty of the counties to keep in reasonable repair, so that they shall be reasonably safe and convenient for public travel, all county roads, bridges and culverts that are within their jurisdiction and under their care and control and which are open to public travel. The provisions of law respecting the liability of townships, cities, villages and corporations for damages for injuries resulting from a failure in the performance of the same duty respecting roads under their control, shall apply to counties adopting such county road system. In actions arising thereunder, service shall be made upon the chairman of the board of supervisors

Amount of  
indebtedness  
may be con-  
tracted.

Proviso.

Repair of  
roads and  
bridges.Liability of  
townships,  
cities, etc.

or the county clerk of the county made defendant therein, which shall be named in the process as the "county of ....., " and any judgment obtained thereon against such county shall be audited and paid as are other claims against such county.

Issue of bonds,  
etc., to be  
submitted.

(81) SEC. 22. Whenever the board of supervisors of the county by a majority vote of all the members elect resolve to contract indebtedness or issue bonds to raise money for the construction and maintenance of county roads, the question shall be submitted to a vote of the electors of the county at a general or a special election called for that purpose. Notice of the submission of such resolution to a vote of the electors and, in case a special election is called, notice of the calling of such special election shall be given in the same manner and for the same length of time as now prescribed by law. If a majority of the electors voting on such resolution shall vote in favor thereof, it shall be deemed to have carried. The manner of stating the question upon the ballots shall be prescribed by the resolution of the board of supervisors. No bond or evidence of indebtedness shall be negotiated at less than par and the accrued interest. All money raised by the board of supervisors for the construction and maintenance of county roads shall be expended under the direction of the board of county road commissioners.

Township  
roads.

(82) SEC. 23. All established and public roads in townships, except county roads, shall be township roads, and shall be under the care and supervision of the township board and highway commissioner.

Act not  
operative  
in certain  
counties.

(83) SEC. 24. In counties where the county road system is not adopted in manner aforesaid the provisions of this chapter shall not be operative, but in all such counties the acts and provisions of law mentioned and referred to in the last preceding section shall be operative, and shall have the same force and effect as though the provisions of this chapter had not been enacted.

Am. 1911, Act 148.

Accounts of  
receipts and  
disbursements.

(84) SEC. 25. Accurate accounts shall be kept under the direction of the board of all money received and disbursed by it, and a full statement thereof together with a complete statement in detail, of all work done, right of way acquired, and road constructed by said board shall be made to the board of supervisors of the county at its annual meeting each year. The accounts of said board of county road commissioners shall be reported to and audited by the board of supervisors at each meeting thereof or by any committee they may appoint for such purpose: Provided, That in counties having a board of auditors the accounts shall be audited by the board of auditors of that county, but the said board of auditors shall have no jurisdiction over the expenditure of any portion of the county road fund.

Proviso.

(85) SEC. 26. The adoption of the county road system in any county shall not prohibit any organized township from building State reward roads: Provided, however, That the provisions of this act shall not apply to townships which have already bonded in good faith for the purpose of building roads under the provisions of section twenty-six of chapter four, act number two hundred eighty-three of the public acts of nineteen hundred nine, prior to the passage of this act.

County road system not to bar State reward roads.  
Proviso.

Am. 1911, Act 168.

Section 26 above referred to, is this section as it stood previous to its present amendment, and provided for the return of the county road tax collected in the township, to be applied in payment of the principal of bonds issued.

(86) SEC. 27. In case any organized township shall decide to build a mile or more of State reward road as provided in section twenty-six of this act, the township board of such township shall file a written notice with the board of county road commissioners through the county clerk, on or before the first day of May in the year in which such road is to be built, stating that it is the intention of such township to build a certain piece or pieces of road, which shall be fully described in such notice, and thereupon the board of county road commissioners shall furnish an engineer or surveyor who shall establish a grade for such road or roads, and shall set grade stakes on each side of the road, not more than one hundred feet apart, to which the grade shall conform. Should a road which the township has decided to improve be a portion of one that the county road board is improving or proposes and intends to improve, then such township shall build such piece of road of such material and of such width as will conform to the proposed plans of such county road board for such road.

Notice to build reward roads.

Duty of commissioners.

Roads being improved by commissioners.

(87) SEC. 28. The board of supervisors of any county which has adopted or may hereafter adopt the county road system, may, upon petition of ten freeholders residing in each of the several townships, incorporated villages and cities in the county, submit the question of rescinding the vote by which it was adopted, and the resolution to submit, and all proceedings subsequent thereto, shall, as nearly as may be, follow the forms and manner of proceedings provided for voting on the question of adopting the county road system.

Question of rescinding vote.

(88) SEC. 29. When any county shall rescind the vote by which it has adopted the county road system, this act shall cease to be operative except for the purpose of completing work under contract at the time of such rescission. The funds then remaining in the county treasury or thereafter paid therein to the credit of the county road tax shall be placed in the general fund of said county. When any county shall have adopted the county road system and such adoption shall have been declared null and void by any court of competent jurisdiction, all moneys remaining in the county road fund, or thereafter placed therein, shall, upon resolution of the board of supervisors, be placed in and become a part of

Act, when inoperative.

Disposition of moneys.

Roads to  
revert to  
townships.

the general fund of such county. All county roads shall revert to the townships, and all highways and bridges shall hereafter be laid out, built and maintained in all respects as though such county had never adopted the county road system.

Marquette  
county, pro-  
visions rela-  
tive to.

(89) SEC. 30. None of the provisions of this chapter relative to the election and term of office of county road commissioners shall apply to the county of Marquette, or to any other county in which special provision therefor, has been or may hereafter be made by the legislature. In said county of Marquette the board of supervisors shall appoint a board of county road commissioners who shall possess all the powers and duties of county road commissioners under this act. Such board of county road commissioners in said county shall consist of three members, one of whom shall hold his office for the term of one year, one for the term of two years and one for the term of three years from and after the first day of May, nineteen hundred five, and annually thereafter. Prior to the first day of May of each year, the board of supervisors shall appoint one commissioner for the term of three years to succeed the commissioner whose term of office shall soonest expire. Such commissioners shall hold their offices until their successors are appointed and qualified. Whenever any vacancy shall occur in the office of county road commissioner in said county the board of supervisors may appoint some qualified person to fill such vacancy for the unexpired term of such office. The board of supervisors may diminish the number of county road commissioners in such county as hereinbefore in this act provided.

Townships  
operating  
under town-  
ship system.

(90) SEC. 31. Any township which may have adopted the township road plan provided for in sections twenty-six and twenty-seven of act number two hundred thirty of the public acts of eighteen hundred ninety-five, as originally set forth, and which has raised money and built roads in good faith, shall continue under such plan until by a majority vote of the electors of such township voting thereon, the township shall abolish such system; and while under such system they shall not, without their consent, be liable to any tax for a county road system, should the county in which such township is situated afterwards adopt the county road system. No township in the State not now in operation under this township system shall adopt it.

A township cannot claim that an act of the legislature, exempting such townships from taxation for county road systems as shall establish a township road system, constitutes a contract, the obligations of which a subsequent legislature cannot impair by repealing the act, as the municipality is but a government agency.—Supervisors v. Hubinger, 137 / 72.

## CHAPTER V.

## STATE REWARD FOR ROADS.

(91) SECTION 1. There is hereby created and established a state highway department, which shall be charged with the giving of instruction in the art of building, improving and repairing public wagon roads and bridges, collecting reports from township and county highway commissioners, overseers of highways and superintendents and commissioners of streets in villages and cities, and with the distribution of any State reward for improving the public wagon roads, that this legislature or any future session may provide for, or any funds that may be given to the State for such purposes by the United States government.

State highway  
department,  
duties, etc.

(92) SEC. 2. The chief officer of said department shall be denominated the state highway commissioner. He shall be a citizen of this State and shall have his office at the seat of government and shall personally superintend the duties thereof. He shall be appointed by the governor, by and with consent of the senate, on or before the first day of July, nineteen hundred nine, and shall hold his office on and after said first day of July, nineteen hundred nine, until the first day of July, nineteen hundred thirteen, and until his successor is duly elected and qualified as hereinafter provided. In the year nineteen hundred thirteen, and every four years thereafter, a state highway commissioner shall be nominated and elected by the people of the State of Michigan at the same time and in the same manner as the justices of the supreme court are nominated and elected. He shall take his oath of office July first, following his election, and his term of office shall be four years from that date and until his successor is duly elected and qualified. He shall receive an annual salary of two thousand five hundred dollars. The state highway commissioner may appoint a deputy who shall be a competent civil engineer. Such deputy shall take and subscribe the oath of office prescribed by the constitution, and whenever the commissioner shall be disabled from executing the duties of his office, his deputy, duly appointed, shall execute the duties thereof until such disability be removed. Such deputy shall receive an annual salary of eighteen hundred dollars. The commissioner may employ such other clerks or employees as may be necessary to perform the duties incumbent upon the department. The salaries of the commissioner, deputy commissioner and others employed by authority of this act shall be paid upon the warrant of the auditor general in the same manner as other State officers and employees are paid; and all other expenses shall be approved by the board of state auditors and paid upon the

State highway  
commissioner,  
appointment,  
etc.

Election of,  
salary, etc.

Deputy,  
salary, etc.

Clerks.

Payment of  
salaries, etc.

Vacancy.	warrant of the auditor general. Whenever a vacancy shall occur in said office of commissioner by reason of death, resignation or otherwise, the governor shall fill such vacancy by appointment, but such appointee shall hold office only until the next general State election when a new commissioner shall be elected for the unexpired term. The commissioner so appointed shall, within fifteen days from the time of notice of his appointment, take and subscribe the oath of office prescribed by the constitution, and shall file the same in the office of the secretary of state, and the said commissioner shall give to the people of the State of Michigan a bond in the penal sum of five thousand dollars, with sureties to be approved by the auditor general, conditioned for the faithful discharge of the duties of his office. The commissioner shall make a biennial report to the governor, which report shall contain the name and compensation of each and every person that may be or has been employed by the department, and the whole amount of the expenses of the department in the interim not previously reported. Such report shall be made on or before the first day of February, nineteen hundred nine, and every two years thereafter, and the commissioner shall have printed a sufficient number of these reports to provide every township highway commissioner and county road commissioner in the State with a copy, and such further number as may be necessary to satisfy the demand that the public weal may warrant.
Oath and bond.	
Biennial report.	
Annual road institute.	(93) SEC. 3. The highway commissioners of the several townships in each and every county in the State, and the county highway commissioners in counties working under the county road law, shall meet annually in a road institute, at such time and place in each county or adjoining county as the state highway commissioner may designate, there to consider such matters as he may present to their attention, and to discuss such matters of road improvement as may be of special interest to such township and county highway commissioners, and every township highway commissioner may collect from his township the same per diem for this day as for one spent in actual road work, and his actual expenses in attending such institute shall, if reasonable, be allowed by the township board and shall be paid by said township. Every county highway commissioner may collect from his county the same per diem for this day as for one spent in actual road work, and his actual expenses in attending such institute, shall, if reasonable, be allowed by the board or committee, or county auditors who may have the authority in such matters in the county of which he is a county highway commissioner, and shall be paid by said county.
Per diem compensation.	
Reports of overseers, commissioners.	(94) SEC. 4. At the request of the state highway commissioner, every road district overseer of highways, every township overseer of highways, every township highway commissioner, every county highway commissioner, and every village

or city superintendent or commissioner of streets, shall make a sworn report to the state highway commissioner, on or before December first each year, answering such questions as the state highway commissioner shall deem proper to ask and they able to answer, giving him such information as he may require and their ability permit, appertaining to roads, streets, methods of construction, material, machinery and costs, upon blanks which he may furnish and send out.

(95) SEC. 5. Any road district overseer of highways, or township overseer of highways, or township highway commissioner, or county highway commissioner, or village or city superintendent or commissioner of streets, who shall refuse or neglect to make such report at time stated or within thirty days thereafter, when requested to by the state highway commissioner, or who shall, in whole or in part, refuse or neglect to make such report at time stated or within thirty days thereafter, or who shall make a report which shall be in whole or in part false, shall be guilty of a misdemeanor, and upon conviction thereof, in any court of competent jurisdiction, be fined in any sum of not less than ten dollars and costs, and not exceeding one hundred dollars and costs, or be confined in jail not less than ten days, nor more than thirty days, for each and every offense, at the discretion of the court. Violations of the provisions of this act may be prosecuted in the name of the people of the State of Michigan, and it shall be the duty of the prosecuting attorney of each county to prosecute for any violation of the provisions contained in sections four and five of this chapter.

(96) SEC. 6. It shall be the duty of the state highway commissioner to furnish outline plans and specifications for the improvement of public wagon roads, and, when requested to, and where proposed improvements are of sufficient importance to warrant, he shall go or send some one, to give expert advice of how to best build or improve public roads or bridges. He shall also gather all the information possible about all kinds of road building material in the State, its relative value, cost, and also cost of transportation to other places in the State, and to give this information upon request to any road or street official in the State free of charge to them.

(97) SEC. 7. The terms, "roads," or "public roads" or "public wagon roads" in this act, shall, at all times, be construed to mean, the leading public wagon roads outside of incorporated villages and cities.

(98) SEC. 8. The state highway commissioner shall keep a complete record of the doings of the state highway department, which record shall be the property of the State, and shall as soon as possible make a map of every township in the State showing the roads and the conditions of the roads, together with marks indicating where road building material can be found, and what kind and what quality.



Duty of commissioner upon application for allotment of state reward.

(99) SEC. 9. Whenever any township shall file notice with the state highway department through its township board, or when any county commissioners in counties under the county road law, shall do likewise, that the township or townships acting conjointly on boundary line roads or county or counties acting conjointly on boundary line roads has made arrangements to improve a mile or more of public wagon road by building a clay gravel, a gravel, a stone gravel, a gravel stone or macadam road, and shall ask for an allotment of State reward, and shall file with the department a profile of the road to be improved, made out by a competent surveyor, and shall make application for outline plans and general specifications, it shall be the duty of the state highway commissioner to enter such application in the order in which it is received, and to furnish the outline plans and general specifications asked for, and, provided there are any funds in the state treasury not yet allotted, appropriated for State reward for roads, he shall make the allotment, and providing the fund appropriated for State reward, shall have all been allotted, then the allotment shall be made as soon as there shall be available funds in the state treasury. When any township or townships acting conjointly on boundary line roads or any county or counties acting conjointly on boundary line roads have built a mile or more of such road as is hereinafter described, and when inspected by the state highway commissioner, or by some one acting under authority of the commissioner is found to be up to the required standard, he shall, providing there are funds in the state treasury for the paying of this reward, verify the same to the auditor general of the State, who shall draw a warrant upon the state treasurer, payable to the proper authorities in such township or county or townships or counties for the amount of reward due them, for the amount and class of road built. And, providing there are no funds in the state treasury for the paying of such reward, as soon as sufficient moneys shall become available, the state highway commissioner shall verify the same to the auditor general, who shall draw his warrant as above set forth: Provided, That the road shall be kept in as good condition as when approved by the commissioner, until the payment of the reward thereon.

Payment for roads built.

(100) SEC. 10. The following described roads, when built, shall merit the reward attached to each description:

State reward roads.

(a) Every mile of well graded road on which the steepest incline shall not exceed six per centum, and the width of which shall not be less than twenty feet between and exclusive of side ditches, and which shall be properly drained, and have a wagon way or travel track not less than nine feet wide, made of a mixture of sand and clay or other material according to specifications furnished by the state highway commissioner, shall merit, if approved by the state highway commissioner, a reward from the State of two hundred

fifty dollars, and pro rata for extra miles and fractions thereof in excess of the first mile;

(b) Every mile of well graded road on which the steepest incline shall not exceed six per centum, and the width of which shall not be less than twenty feet between side ditches, and which shall be properly drained, and have a wagon way or travel track not less than nine feet wide, and which shall consist of not less than eight inches of compacted gravel, or not less than twelve inches of compacted burnt shale, which must be applied in not less than two layers, each layer to be rolled separately: Provided, That both shoulders and metaled track shall be properly crowned so as to shed water quickly to the side ditches, shall merit, if approved by the state highway commissioner, a reward from the State of five hundred dollars, and pro rata for extra miles and fractions thereof in excess of the first mile; Gravel roads.  
Proviso.

(c) Every mile of well graded road on which the steepest incline shall not exceed six per centum, and the width of which shall not be less than twenty feet between side ditches and which shall be properly drained, and have a wagon way or travel track not less than nine feet wide, made in two courses, the bottom course to be crushed stone, slag or other material, if approved by the state highway commissioner, and shall not be less than four inches thick after thorough rolling, and a top course consisting of a layer of gravel which shall not be less than three inches thick after being thoroughly rolled: Provided, That both shoulders and metaled track shall be properly crowned so as to shed water quickly to the side ditches, shall merit, if approved by the state highway commissioner, a reward from the State of seven hundred fifty dollars, and pro rata for extra miles and fractions thereof in excess of the first mile; Crushed stone  
roads.  
Proviso.

(d) Every mile of well graded road on which the steepest incline shall not exceed six per centum, and the width of which shall not be less than twenty feet between side ditches, and which shall be properly drained and have a wagon way or travel track not less than nine feet wide, made in two courses, the bottom course to be of gravel, slag or other material, if approved by the state highway commissioner, and be not less than four inches thick after thorough rolling, and a top course consisting of a layer of crushed stone which shall be not less than three inches thick after being thoroughly rolled and properly bonded: Provided, That both shoulders and metaled track shall be properly crowned to shed water quickly to the side ditches, shall merit, if approved by the state highway commissioner, a reward from the State of seven hundred fifty dollars, and pro rata for extra miles and fractions thereof in excess of the first mile; Proviso.

(e) Every mile of well graded road on which the steepest incline shall not exceed six per centum, and the width of which shall not be less than twenty feet between side ditches, Macadam  
roads.

and which shall be properly drained, and have a wagon way or travel track not less than nine feet wide of well compacted macadam not less than six inches thick laid in two courses of crushed stone, each to be properly bonded with stone screenings, asphaltic, bituminous or other cement approved by the state highway commissioner, and thoroughly rolled: Provided, That both shoulders and metaled track shall be properly crowned so as to shed water quickly to the side ditches, shall merit, if approved by the state highway commissioner, a reward from the State of one thousand dollars, and pro rata for extra miles and fractions thereof in excess of the first mile;

Brick roads, etc. (f) Every mile of well graded road on which the steepest incline shall not exceed six per centum, and the width of which shall be not less than twenty feet between side ditches, and which shall be properly drained, and have a wagon way or travel track not less than nine feet wide in the clear between beveled edges and which shall consist of properly laid concrete not less than six inches in depth, composed of Portland cement and gravel, or sand and crushed stone, with or without a paving brick surface: Provided, however, That the cement shall be required to meet the standard tests then in force of the American Society for Testing Materials, and that the other ingredients, the manner of laying and the kind of inspection employed shall be made to comply with specifications made by, or approved by the state highway commissioner, shall merit, if approved by the state highway commissioner, a reward from the State of one thousand dollars per mile and pro rata for extra miles and fractions thereof in excess of the first mile.

Am. 1911, Act 148.

State reward. (101) SEC. 11. No claim for State reward for improved roads of over three miles in any one surveyed township, in any one fiscal year shall be allowed by the state highway commissioner: Provided, however, That if any township or county shall have raised money by tax or by sale of bonds to build a mile or more of road such as merits State reward, and the road shall be built and approved by the state highway commissioner, and this road is kept in as good condition as when approved by the state highway commissioner, such township or county shall have its application number remain upon the books of the state highway department, and draw from the State reward fund each year, until such time as the township or county has received the amount due for the class and the amount of road built: Provided, That money has been appropriated for State reward. In case the road building money was raised by the sale of bonds, the State reward money shall be used only for the payment of the principal of the bonds.

Am. 1911, Act 148.

(102) SEC. 12. The state highway commissioner is hereby given the authority to refuse to grant any further road reward to any township or county that has been rewarded by the State for improving roads, that does not keep these State rewarded roads in proper repair, but, upon his refusal to any township or county for an allotment of State reward, it shall be the commissioner's duty to inform such township or county of what repairs are necessary to place them in a position to again be eligible to receive State reward, and if these repairs are made satisfactorily to the commissioner, he shall reinstate them to the eligible reward list. When reward may be refused.

(103) SEC. 13. The decision of the state highway commissioner shall be final, relative to whether the road is built well enough or not to merit State reward, and shall have the right to retain any amount of the reward he deems advisable until the road has been thoroughly tested. Decision of commissioner, final.

(104) SEC. 14. There shall be assigned to the state highway commissioner, by the board of state auditors, suitable rooms at Lansing, for the conducting of the business of the state highway department, and they shall provide suitable furniture and office equipment. Office, etc.

## CHAPTER VI.

### FOR THE SECURITY OF PERSONS AND PROPERTY ON THE HIGHWAYS.

(105) SECTION 1. When any public highway which passes along the bank of any lake, river, or other water course, and which is not included in the limits of a city, or of a platted village, whether incorporated or unincorporated, shall, by the falling or washing away of the bank, or from any other cause become reduced to a width of less than fifty feet, it shall be the duty of the commissioner, acting upon his own knowledge, or on being notified thereof in writing, by any person of adult age, such notice stating the place or places where such defect exists, to proceed within ten days, and examine the same, and if he finds it to be less than fifty feet wide, he shall forthwith lay out, open and work such highway in and upon the adjacent land to the width of fifty feet; and if such land be inclosed, he shall, within ten days, give notice in writing to the owner or occupant of such land, requiring such owner or occupant within thirty days to remove the fence, hedge or other structure forming the inclosure, back from the bank far enough to admit of such opening and working, and if such owner or occupant shall neglect to remove the same, as required by such notice, it shall be the duty of the commissioner forthwith to remove such fence or other structure, doing the owner or occupant no unnecessary damage in making such removal. In cities and platted villages, whether incorporated or unincorporated, street or public highways re- Highways along lake, river, etc. width of.  
Duty of commissioner.  
When land enclosed.  
Municipal corporation to act.

duced in width as aforesaid, shall be restored, repaired, and protected by the municipal corporation having charge of such streets or highways.

The highway defined in this chapter is one passing along a natural body of water and not one in which a ditch or other artificial watercourse may be laid.—*De Lapp v. Beckwith*, 114 / 394. Application to toll roads.—*Carver v. Plank Road Co.*, 61 / 585.

When may  
erect railing.

(106) SEC. 2. When any such highway is less than fifty feet wide, and more than thirty-five feet wide, the commissioner may, in his discretion, instead of widening the same, erect near the edge of the bank, and thereafter maintain in good order a substantial railing or fence, which shall be at least three feet high and sufficiently strong to prevent persons, carriages and animals from falling over such bank.

The legislature intended by this section, to characterize as unsafe for travel, public highways along the banks of lakes, rivers and other watercourses in which the worked part was less than 35 feet in width, and it is proper to consider this section in connection with the law providing for the collection of damages sustained by reason of defective public highways.—*Carver v. Plank Road Co.*, 61 / 585. See section 290.

Cases where  
building pre-  
vents widening  
of highway.

(107) SEC. 3. When any dwelling house or other building shall stand so near any lake, river or other water course, where a highway, which is not included in the limits of a city, or of a platted village, whether incorporated or unincorporated, intervenes, that there shall not be room for a road at least thirty-five feet wide, then the commissioner shall, within ten days after having knowledge of the fact, give thirty days' notice in writing to the owner or occupant of the land to be taken, and to the owner or occupant of such house or other building, of his intention to open a highway in the rear of such house or other building, and if such house or other building shall, within the said thirty days, be moved back far enough to admit of a road being opened and worked at least thirty-five feet wide in front thereof, then the commissioner shall widen such highway in front of such house or other building; but if such house or other building shall not be so removed, he shall then proceed without further delay to lay out a highway in the rear of such house or other building, not less than fifty feet wide.

Damages  
to owner,  
award of.

(108) SEC. 4. Whenever any commissioner acting under the provisions of this chapter, shall remove or cause to be removed, any fence, hedge, or other structure forming the enclosure, and shall take any land to widen a highway, or shall lay out a highway in the rear of any house or other building, he shall award such damages to the owner of the property taken, and for removing such fence, hedge or other structure forming the enclosure when done by the owner, as to him shall seem just and reasonable, and shall tender to the person entitled thereto an order on the treasurer of his township for the amount of any damages awarded to such person; but when no owner, occupant or agent of the property taken resides or can be found in his township, then the commissioner

shall deposit such order with the clerk of his township, who shall deliver the same to the person entitled thereto when applied for: Provided, That any person dissatisfied with the amount of damages awarded by any commissioner in any action had under this chapter, may appeal from such award in the same manner that the action of a commissioner in laying out, altering, or discontinuing a highway, may be appealed from, and subject to the same conditions and liabilities as in such cases provided, but no such appeal shall have the effect to delay any proceeding hereinbefore by this chapter authorized to be had.

Proviso,  
appeal.

(109) SEC. 5. It shall be the duty of the commissioner of highways of each township to see that all plank or gravel road companies, or companies owning or controlling any kind of toll road, maintain their roads in a good and safe condition at all times. When any such plank, gravel or toll road shall become defective, he shall serve a written notice upon any officer or agent of the company owning or controlling the same, describing the locality where such defect exists, and requiring such company to repair such defect within five days from the receipt of such notice; and every such company failing to comply with the requirements of such notice shall for every such offense be subject to a penalty of fifty dollars.

Maintenance  
of road by  
toll and  
plank road  
companies.

Construction of road bed, see Plank Road Co. v. Judge, 109/371; Erin Twp. v. Plank Road Co., 115/465. Abandonment of road.—Gravel Road Co. v. Hogadone, 150/638.

(110) SEC. 6. All proper expenses incurred by any commissioner in complying with the requirements of this chapter shall be paid out of the highway fund of the township.

Expenses.

## CHAPTER VII.

### THE OBSTRUCTION OF HIGHWAYS AND ENCROACHMENTS THEREON.

(111) SECTION 1. In every case where a public highway has been or shall be encroached upon by any fence, building, or other encroachment, the commissioner may make an order under his hand requiring the occupant of the land through or by which such highway runs, and of which such fence, building, or other encroachment forms a part of the enclosure, to remove such encroachment from such highway within thirty days; and he shall cause a copy of such order to be served upon such occupant, and every such order shall specify the width of the road, the greatest extent of the encroachment, and of what it consists, and the place or places in which the same may be, with reasonable certainty; but fences erected for the protection of hedges, or temporary fences for the protection of other improvements, shall not be deemed encroachments, so long as they may be necessary for such protection,

Commissioner  
to order re-  
moval of en-  
croachments.

Certain fences,  
etc., not en-  
croachments.

unless the road be so fenced up as to make the traveled portion less than eighteen feet wide, provided that such hedges or other improvements be not themselves encroachments.

**CIRCUIT COURTS IN CHANCERY:** Have jurisdiction and authority to hear and determine all cases of encroachments upon the public highways, etc. See sec. 433, C. L., 1897.

**JUSTICES OF THE PEACE:** "May have jurisdiction in action for damages, resulting from obstructions to highways," subject to certain restrictions. See sec. 704, C. L., 1897.

**ENCROACHMENTS:** The earlier law (Act 115 of 1861, as amended by Act 64 of 1875) allows an action for encroachments to only such highways as are "laid out and opened." This was held not to extend to highways by user.—See *Parker v. People*, 22/93; *Roberts v. Cottrellville*, 25/23; *Cannau v. Button*, 33/525; *Gregory v. Stanton*, 40/271; *People v. Smith*, 42/138; *Wilson v. Gifford*, 42/454. But the provisions of the present law extend to all public highways, whether actually laid out or such from user.—*Krueger v. LeBlanc*, 62/79. Highways whether by land or water must be used with due regard to their lawful and proper use by others.—*People's Ice Co. v. Steamer Excelsior*, 44/229. Our laws recognize a difference between encumbrances, which cumber a way and make it more difficult and dangerous to travel, and those which appropriate the way or a portion thereof by fences, walls or buildings; and different proceedings and penalties are provided therefor. Powers given to a municipal corporation to impose penalties for cumbering streets would not warrant imposing them for encroachments upon streets.—*Grand Rapids v. Hughes*, 15/54; *High. Com'r v. Withey*, 52/51. To make the obstruction of a way an indictable offense, it must injuriously affect some right in which the public in their aggregate capacity have a common interest as distinguished from a mere individual or private right. If it affects only the rights of an individual, or of a definite number of persons, less than the whole, in their individual capacity, no indictment lies.—*People v. Jackson*, 7/432. The owner of the soil may use the road in any way which does not interfere with the public convenience.—*Clark v. Ice Company*, 24/509; *People v. Foss*, 80/559; *Marquette and Western R. R. Cases*, 62/29 and 47. Trees of the highway are the property of the adjacent owner. They are a nuisance only when they constitute an actual injury or obstruction. If in such case they must be removed, the owner has a right, and must be afforded reasonable opportunity to take them as living trees and transplant them elsewhere; the commissioner has no right to sell them and is liable in trespass for wanton removal.—*Clark v. Dasso*, 34/86. See sections 169, 173-4, 189. Whether an encroachment exists is within the province of the commissioner to determine; until he complains, no one else can do so.—*Township of Lebanon v. Burch*, 78/642; *White v. High. Com'r*, 95/288; *Greenfield Twp. v. Norton*, 111/55. This does not abrogate the common law remedy of abatement of nuisances by the mere act of individuals.—*Neal v. Gilmore*, 141/519. An unauthorized obstruction across a public street is a public nuisance which any citizen desiring to travel along the street may abate.—Id.

**ORDER FOR REMOVAL:** The order must specify the width of the road, the greatest extent of the encroachments and of what it consists; the place or places encroached upon, with reasonable certainty, and in what direction and how far it extends beyond the line of the highway.—*People v. Smith*, 42/138; *Gregory v. Knight*, 50/63; *Township of Lebanon v. Burch*, 78/641. And the party encroaching is not in fault until such notice is served.—*People v. Smith*, 42/138, and 78/641. Nor can he be called upon to remove anything not distinctly located by the notice.—Id. And if the notice is defective in that regard, the thirty days do not begin to run until the notice is perfected.—*People v. Smith*, 42/138. This statute purposely names the occupant of land as the proper person to proceed against for the removal of an encroachment on the adjoining highway.—*Krueger v. LeBlanc*, 62/70. Where the title to the land is in the wife, by an unrecorded deed from the husband, a commissioner's order to remove a fence from the highway is properly served on the husband as occupant of the land.—Id. See *Neal v. Gilmore*, 141/519.

**MISCELLANEOUS:** Surveyors and commissioners of highways have no greater right than other persons to determine starting points and boundaries; they cannot disturb vested rights in land or settle controversies as to titles and their ex parte action is entitled to no special authority in regard to true lines and the fact of encroachment.—*Gregory v. Knight*, 50/61. Any person or corporation in this State who claims authority to obstruct a public street by erecting a gate across it, whether he or it exacts toll for the use of the street or not, must show some grant either directly or mediately from the legislature.—*Plank Road Co. v. Hilton*, 69/115. The abutting land owner, as to other private individuals, has exclusive right to harvest grass in the highway; and can protect it against wanton or malicious damage, and maintain trespass or trover against any person cutting and taking it away against his will.—*People v. Foss*, 80/559. Any disposition of snow cleared from a street railway track must be made with due regard to the rights of travel on the highway.—*Wallace v. Detroit City Ry. Co.*, 58/231. Injuries caused by removing planking from a highway culvert without erecting barriers, see *Briggs v. Pine River Twp.*, 150/480. Failure of the officers of a township

to take steps to prevent the unauthorized building of a street railroad in its highway, or acquiescence therein, does not estop the township from maintaining a bill in chancery to compel removal of the tracks.—Bangor Twp. v. Bay City Traction Co., 147 / 165.

(112) SEC. 2. If such encroachment shall not be removed within thirty days after the service of a copy of such order, such occupant shall forfeit the sum of fifty cents for every day after the expiration of that time during which such encroachment shall continue unremoved, to be recovered in an action of trespass before any justice of the peace of the township, or of an adjoining township in the same county, and the commissioner may proceed to remove such encroachment in the same manner that he may do in case of the opening of a highway, and the person at fault be liable for the costs and expenses of such removal. The highway commissioner shall keep an accurate account of the expenses incurred by him in carrying out the provisions of this and the preceding sections of this chapter, and shall present a full and complete statement thereof, together with a full and legal description of the lands entered upon, to the occupants of such lands, the said statement having been duly verified by the oath of the highway commissioner, requiring the said occupant to pay the amount therein set forth, and in case such occupant shall refuse or neglect to pay the same within thirty days after such notice and demand, the highway commissioner shall present a duly verified copy of said statement to the township board of the township in which such expense was incurred, for their examination and action thereon, and if the said township board shall so recommend, the supervisor of the township shall cause the amount of all such costs and expenditures to be duly assessed and levied on the lands described in the statement of the commissioner of highways, which sum so assessed and levied shall be collected in the same manner as delinquent highway taxes are collected, but no person shall be required to remove any fence under the provisions of this section between the first day of May and the first day of September unless such fence shall have been made within three months next before the making of the order for the removal thereof: Provided, That if the person upon whom the copy of such order shall be served at any time before the expiration of said thirty days, by a written notice served upon the commissioner, deny such encroachment either in whole or in part, or shall deny the existence of a highway where such encroachment is claimed to exist, the commissioner, instead of proceeding to remove such encroachment, shall commence an action of trespass against the person upon whom the copy of such order was served, as hereinafter provided.

Penalty for failure to remove encroachments.

Duty of commissioner.

Costs and expenditures to be assessed.

Proviso, action of trespass.

The thirty days will not begin to run on a defective notice.—People v. Smith, 42 / 138.

REMEDY FOR ENCROACHMENT: The action of trespass for encroachments on a public highway does not lie where the notice to remove them shows that the alleged encroachment is caused by fences entirely obstructing



the road.—*High. Com'rs v. Withey*, 52/50. For proceedings in such a case see *Id.* Also *Grand Rapids v. Hughes*, 15/51 and section 167. When a highway commissioner's order is disregarded his remedy is specifically prescribed, and no remedy in any other form is well calculated to reach the desired result.—*Township of Lebanon v. Burch*, 78/642. In proceedings to remove an encroachment a highway commissioner is justified only in the fact that the highway is encroached upon.—*Gregory v. Stanton*, 40/271; *Krueger v. LeBlanc*, 62/71. He is liable for any trespass he may commit if it proves not to be a highway and an encroachment thereon.—*Krueger v. LeBlanc*, 62/71. So long as the true location of the highway is in question, such proceedings cannot be taken.—*Gregory v. Stanton*, 40/271. Nor when there is a dispute in good faith as to the existence of the highway.—*Wilson v. Gifford*, 42/454; *Campau v. Button*, 33/525. Such existence must be settled in some other way.—*Campau v. Button*, 33/525. And the public authorities have no right to make entry where the existence is in dispute.—*Clark v. Ice Co.*, 24/509.

The statute of 1861 allowed proceedings to recover for obstructions to highways only for highways that had been "laid out and opened."—*Parker v. People*, 22/93; *Roberts v. Highway Commissioners*, 25/23.

MISCELLANEOUS: The occupant of land charged with an encroachment upon a highway is not called upon to serve upon the commissioner a notice denying the existence of such highway until after he is served with a copy of the commissioner's order for the removal of the alleged encroachment.—*Osborn v. Longsduff*, 70/127. The penalty for obstructing a highway cannot be enforced by indictment or information.—*Pettinger v. People*, 20/336. In an action of trespass against a commissioner of highways, for removing a fence which he claimed was an encroachment upon a regularly laid section line highway, and so described it in the order for removal the commissioner can only justify by showing that the highway is located upon the section line, and a contrary finding by the jury entitles the plaintiff to a verdict.—*Cronenwaite v. Hoffman*, 88/617. A highway commissioner, claiming an encroachment on the highway, served an order for the removal of a fence thereon. No denial being served, the commissioner removed the fence. Held, that in trespass for so doing, the order alone was no proof of the fact stated in it that the fence was in the highway, and, in absence of such proof, furnished no justification to the commissioner.—*Labo v. Asam*, 143/24. See *Watz v. Sunderland*, 147/96.

Claim for damages.

Pleadings.

(113) SEC. 3. Such action shall be brought by the commissioner in his name of office, claiming nominal damages only in the sum of six cents, before any justice of the peace of the township, or of any adjoining township in the same county. The declaration in such action shall follow the order required by section one of this chapter, in describing such encroachment; and the defendant may plead denying the encroachment in whole or in part, and may also deny the existence of a highway where such encroachment is claimed to be; if he shall have denied the same in the notice which, by the last preceding section, he may serve upon the commissioner, and shall have set the same up in defense at the time of joining issue, and the pleadings of either party may be amended in all respects as provided by chapter two hundred and eighty-four of the compiled laws of eighteen hundred and ninety-seven; but otherwise the legal existence of the highway shall not be questioned on the trial, and the fact of such encroachment, and where the true line of the highway is, shall only be tried.

PROCEEDINGS: This and the two sections following furnish an adequate remedy for removing encroachments upon township highways and leaves no occasion for resort to equity.—*Township of Lebanon v. Burch*, 78/641. For summary of general propositions relating to encroachments and equity jurisdiction, see *Id.* Proceedings to remove encroachments from a public highway must be quashed where neither the notices given nor the finding of the jury furnish any means of finding the extent of the encroachment or its distance from what is said to be the true line of the highway.—*Gregory v. Knight*, 50/61. The intention of this section, providing for an action of trespass where an alleged encroachment upon or the existence of a highway is denied, is to have an exact conformity between the order for removal and the declaration, which pleading is intended to be in writing, and, if verbal, must be

equally specific.—*LeBlanc v. Krueger*, 75/561. Defective description in declaration.—*Graham v. Langston*, 65/45. As to actions involving the title to land, see *LeBlanc v. Krueger*, 75/561.

Existence of highway denied.—*Scheimer v. Price*, 65/638; *Osborn v. Longsduff*, 70/126; *Wyman v. St. Johns Village*, 100/571.

(114) SEC. 4. The summons in such action may be in the same form, and shall be issued and served, and a jury shall be impaneled when demanded, and all proceedings had as near as may be, as in cases of personal actions of trespass, and full costs shall be taxed by the justice and paid by the losing party, except that if the commissioner demands a jury he shall not be required to advance the jury fee, and the adjournment of the trial shall not exceed ten days in all. The jury shall specify in their verdict, if they find the defendant guilty of causing or maintaining the encroachment as charged, and the extent thereof, and if the existence of the highway has been denied, they shall also specify, if they find a highway to exist, whether it be such by public use or by having been regularly laid out and established as a public highway. In the trial of any cause involving the existence of any highway, the burden of proof shall be upon the contestants to show that the same has not been regularly laid out and established as a public highway, or has not become such by public use.

Summons,  
jury and other  
proceedings.

Finding  
of jury.

Burden of  
proof.

In proceedings to remove encroachments from highways the jury cannot pass upon anything that is not complained of.—*Gregory v. Knight*, 50/61. Disputes concerning private estates or boundaries cannot be determined in special and summary proceedings for the removal of encroachments on highways; such proceedings will lie only where there is no real question as to the existence and bounds of the highway. Title to land can only be determined by the judicial courts.—*Id.* This statute permits a jury to award both damages and costs against the person complaining of an encroachment on the public highway, if the encroachment is not proved; but on certiorari the supreme court has no authority to award anything but costs.—*Gregory v. Knight*, 50/62. Damages for obstructing a highway so that plaintiff could not draw wood to market cannot be measured by the quantity plaintiff could have got out with the unobstructed use of the road unless there is evidence that he desired to get it out and could and would have sold it but for the obstruction.—*Wicks v. Ross*, 37/464. This section plainly shows that the act is intended to protect highways that have become such by public use, no less than those laid out and established by law.—*Krueger v. LeBlanc*, 62/79.

(115) SEC. 5. Either party may appeal to the circuit court of the proper county in the same manner that appeals are taken from justices' courts in other cases, but in case of an appeal taken by the commissioner he shall not be required to pay the costs or furnish an appeal bond. In case of such appeal, trial shall be had on the issue joined in the justice court, and in case of a judgment in any court against the commissioner, no execution shall issue, but the judgment shall be certified to the proper supervisor and the amount thereof assessed and collected as in case of judgments against townships.

Appeal to  
circuit court.

ACTIONS ON APPEAL: Certiorari to review proceedings to remove an encroachment upon an asserted highway, will not be dismissed on the ground that the plaintiff in the writ does not appear by the record technically and formally as an original party, when it is apparent he has rights which were affected by the proceedings, and that he was treated and recognized throughout as a substantial party.—*Campau v. Button*, 33/525. A writ of certiorari to review proceedings before a justice of the peace and a jury must be di-

rected to the justice, and if necessary to bring up the final action of the commissioners or the documentary evidence annexed to it, to them also. The township clerk is not a member of the board of commissioners; and a record of their proceedings made up by him, the service of a writ of certiorari directed to them, upon him, and a return thereto by him, are each without authority of law.—*Roberts v. High. Com'rs*, 24 / 182. The requirement that the "trial shall be had on the issue joined" is mandatory, and precludes the amendment of a declaration, where the same wrongfully described the location of the highway.—*Graham v. Langston*, 65 / 45.

Proceedings  
after final  
judgment.

(116) SEC. 6. In all cases of final judgment against any person for causing or maintaining an encroachment, the commissioner may proceed to remove the same within ten days after such judgment, in the same manner that he may do under section two of this chapter, where the encroachment or the existence of the highway is not denied, and the penalty prescribed in said section two shall attach and continue from and after the expiration of the thirty days mentioned therein, until such encroachment be removed: Provided, That in all cases of final judgment against any person or persons for causing or maintaining an encroachment or obstruction upon the highway, if such person or persons shall, subsequent to such final judgment, by force or otherwise, interfere with the commissioner of highways in the performance of his duties under this act, or if such person or persons shall place or cause to be placed any of the encroachments or obstructions which had been removed, or in any way interfere with the said highway, the highway commissioner may, upon complaint duly made before any justice of the peace of said township or of an adjoining township, cause the arrest of such person or persons, and if a conviction shall be had under such complaint made of the offense charged therein, such person or persons having been adjudged guilty, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, in the discretion of the court.

Proviso, punishment for  
interference  
with commissioner.

Width of  
highways.

(117) SEC. 7. All public highways for which the right of way has at any time been given or purchased for a highway sixty-six feet wide, shall be and remain sixty-six feet wide, and no encroachments by fences, buildings or otherwise which may have been made since the purchase or gift of such sixty-six feet, nor any encroachments which were within the limits of such sixty-six feet at time of purchase or gift, and no encroachments which may hereafter be made, shall give the party or parties, firm or corporation so encroaching, any title or right to the land so encroached upon.

Right to set  
poles.

(118) SEC. 8. No person or persons, firm or corporation shall have the right to set a pole or poles along the line of any public highway, within twenty-five feet of the center of the highway on either side, without the consent of the township board in the township in which such highway is located and where such pole or poles are to be set; and in no case shall the poles be set within fifteen feet of the center of the highway on either side.

(119) SEC. 9. Any party or parties, firm or corporation violating any of the provisions of this act, shall, upon demand of the township highway commissioner of the township in which such highway is located, remove such encroachments, poles or posts. If removal be not made within thirty days after written demand be made by the said highway commissioner, then the said commissioner shall have the right to remove such encroachments, poles or posts and the party, parties, firm or corporation, so violating, shall be liable for the amount of expense incurred in making such removal.

Removal of  
poles, etc.

(120) SEC. 10. If any building or other serious obstruction shall, in the process of moving, be left in the highway, so as to interfere with the travel thereon, the commissioner may notify the person at fault to remove the same within two days, such notice to be either verbally or in writing, and if such obstruction be not removed pursuant to such notice the person at fault shall be liable to a penalty of five dollars per day for each day that the same shall remain unremoved, and after seven days the commissioner may proceed to remove it.

Buildings  
in process  
of moving.

Penalty for  
failure to  
remove.

(121) SEC. 11. In case any saw logs, cordwood, or other loose obstruction shall be upon any highway, the commissioner may notify the owner, if known, to remove the same within three days, and if not so removed, or the owner is unknown, the commissioner may remove such obstruction to some convenient place, and if it have a value he shall hold it for thirty days subject to the order of the owner upon payment of the necessary expenses of removal, after which time he may sell the property removed, and such sale, notice of sale and application of the proceeds thereof shall be the same as is now required by law of constables on sale under execution, and the expense of removal, care of property and sale shall be deducted from the proceeds of sale, and the balance paid to the owner of such property, or deposited with the township clerk to be by him paid to the owner. In case the article or thing have no value or is not of sufficient value to pay for the removal, the commissioner shall be entitled to compensation for the expense of removing it, to be audited and allowed by the township board, and the expense of removal may be recovered from the owner in the name of the township in an action of assumpsit.

Saw logs,  
cordwood,  
etc., removal  
of.

When com-  
missioner  
may sell.

When com-  
missioner  
entitled to  
compensation.

As to the right of an adjoining property owner to put stone, wood-piles, brush-heaps, etc., in the highway, see *Bennett v. Hazen*, 66 / 657. The unauthorized or excessive use of a portion of the public highway by an abutting owner in putting lumber or material thereon is a matter that falls within the cognizance of the police power, and it has nothing to do with the duty to make or repair highways.—*McArthur v. Saginaw*, 58 / 357.

## CHAPTER VIII.

## THE ERECTION, REPAIRING AND PRESERVATION OF BRIDGES.

Building, re-  
building and  
repairing of  
bridges.

(122) SECTION 1. The commissioner of highways shall have the care of the building, rebuilding and repairing of all bridges within his township, but he shall not have the right to build new bridges to exceed fifty dollars in cost, without the approval of the township board, or of a majority of the electors of the township voting thereon.

See section 134 as to width of bridges, etc.

BRIDGES: Highway commissioners have no authority to involve the township in debt, at their discretion, for building bridges.—*Hosler v. Higgins Twp. Bd.*, 45/340. Highway commissioners will not be compelled by mandamus to cause a bridge to be built in the place of one which has been destroyed, where the cost greatly exceeds the amount prescribed by the statute.—*Goodsell v. Post*, 30/353, neither will the supreme court interfere by mandamus to compel a township board to repair a public bridge.—*Perrine v. Hamlin*, 48/641; *Travis v. Skinner*, 72/152. The town authorities have no right to build a bridge across a navigable stream without the sanction of the board of supervisors.—*Const. Art. 8, Sec. 14*; *Stoffet v. Estes*, 104/208. Discretion of township authorities.—*Kingsley v. Nyland*, 136/535. See sections 225-227.

CONTRACT FOR CONSTRUCTION: Highway commissioners have no authority to contract with persons who have not themselves bid for work that under the statutes can only be let on sealed proposals.—*Beard v. DeGolt*, 58/245. The use of a bridge by the people of the township, when traveling upon a public highway cannot be construed as an act of acceptance of the work done in building the bridge; the proper parties to ratify a contract are those only who could in the first instance have lawfully made the contract.—*Taymouth v. Koehler*, 35/22. The board of highway commissioners having under the statute authority without a vote of the people in certain cases to repair or reconstruct bridges, a person entering into a contract with one of its members, which upon its face appears to be within the authority of the board, has a right to assume that the contract is, in fact as in appearance a proper one; and if he goes on and in good faith furnishes material under such contract, he will be entitled to recover therefor in case the commissioner was authorized by the board to make such contract, or if his action was afterwards ratified by the board.—*Id.* The board of highway commissioners may ratify an unauthorized contract for doing work which is within their general powers to contract to have done, either while the work is in progress or after it is completed, by action at a meeting held pursuant to previous notice, or at a meeting of all the members without notice, and the township will be bound by their action; but the members of the board severally have no such power.—*Id.*

NECESSITY: Held that the rebuilding of a bridge was a necessity, where the same had been maintained for a number of years.—*Brophy v. Schindler*, 126/342. The rebuilding of a bridge is a necessity, unless proper proceedings are taken to discontinue the highway.—*Berube v. Wheeler*, 128/37.

When neces-  
sity requires  
greater ex-  
penditure than  
provided.

(123) SEC. 2. Whenever, in the opinion of the commissioner, an exigency exists requiring a greater expenditure than has been provided for by the electors or township board, as authorized by chapter two of this act for the building, rebuilding or repairing of any bridge or bridges, road or roads in his township, or whenever he shall be petitioned in writing by not less than fifteen freeholders thereof, he shall notify the township clerk thereof in writing, and the said clerk shall, within five days thereafter, call a meeting of the township board to consider the matter of said notice. And in case the exigency shall be deemed to exist, the commissioner, with the township board, may order that any sum not exceeding one thousand dollars shall be raised in addition to that already provided for, and if, in the opinion of the said commissioner

Township  
board may  
order addi-  
tional funds.

and township board, it shall be necessary to raise more than one thousand dollars, the said township board may order that the question of raising money for such building, rebuilding or repairing be submitted to the electors of said township. If the order be made within one month preceding the annual township meeting the question shall be submitted at such meeting, but otherwise a special meeting may be called and the township board may determine the form of notice as prescribed in the next section, and at such meeting the electors may vote a sum, not exceeding one-half of one per centum in any one year on the assessed valuation of the real and personal estate of such township, as may appear by the then last assessment, for the purposes in this section specified.

Submission  
to electors.

When  
submitted.

Sum may  
vote.

**OPINION OF COMMISSIONER:** The opinion of the commissioner of highways as to the cost of repairing a bridge must prevail, and mandamus will not be granted to compel such repairs at his own motion, where in his return he shows that in his opinion the cost will exceed \$1,000.—*Travis v. Skinner*, 72/152; *Bigelow v. Brooks*, 119/208; *Berube v. Wheeler*, 128/35. See *Pearl v. Benton Twp.*, 136/697.

**MEETING OF BOARD:** There should be proper written evidence placed on file or on record, showing that the requisite statutory preliminary requirements to a legal meeting have been complied with and showing that such a meeting has been held and the proceedings thereof.—*Taymouth v. Koehler*, 35/25. The record must show all statutory requirements complied with.—*Loomis v. Rogers Twp.*, 53/142.

See sections 148-153 relative to the building of bridges, situated in more than one township, etc., when any township is unwilling to contribute its just share. See also *Ionia Co. Sup'rs v. Judge*, 134/416.

(124) **SEC. 3.** Notice of such vote to be taken, whether it be at an annual or special meeting, shall be given in the manner and for the length of time prescribed by law for holding special township meetings; and such notice shall state the amount of such proposed tax, and the bridge or bridges, road or roads, for the building, rebuilding or repair of which the money proposed to be raised is to be applied. The vote in such cases shall be by ballot, and the ballots shall express "For the bridge tax," or "Against the bridge tax," "For the exigency road tax," or "Against the exigency road tax" and the result shall be as a majority of those voting shall determine. Elections for such purpose shall be conducted, and the result ascertained and certified, in the manner provided by law for annual and special township meetings.

Notice of  
election.

Ballot,  
conduct of  
election, etc.

(125) **SEC. 4.** Any moneys that may be voted pursuant to the last two preceding sections shall be reported to the supervisor and included in the next ensuing tax levy, and the commissioner may draw his orders upon the township treasurer for the amount so voted in anticipation of the collection of such moneys, such orders to be applied to the purpose for which such moneys were voted, and to no other purpose.

Tax levy,  
drawing of  
orders, etc.

(126) **SEC. 5.** The board of supervisors of any county may cause to be raised and levied upon the taxable property of the county a sum not exceeding one thousand dollars in any one year, to be apportioned among the several cities and townships of the county in proportion to the amounts raised

Supervisors  
may raise  
money for  
bridges.

in such cities or townships for bridge purposes, in excess of three hundred dollars, and such moneys when collected shall be paid to the treasurer of the township or townships where the same are to be expended, and applied by the commissioner of highways of such township to the purposes for which the same was raised.

See *Kingsley v. Nyland*, 136 / 538.

Protection  
of bridges.

(127) SEC. 6. The commissioner of highways may erect any piers or booms, or drive any piles, or do any other act not incompatible with the general laws of this State, when necessary for the protection of bridges over any streams in his township against injury from the running of logs, or running or rafting of timber or lumber, or against freshets, or any other cause, in cases where the same can be done without any material obstruction to the navigation of any stream.

Notices to  
be placed  
on bridges.

(128) SEC. 7. The commissioner of highways of any township, or common council of any city or village, may put up and maintain, at the expense of their township, city or village, in conspicuous places at each end of any bridge in such township, city or village, maintained at the public charge, and the length of whose chord is not less than twenty-five feet, a notice with the following words in large characters: "Five dollars fine for riding or driving on this bridge faster than a walk;" and in case such bridge shall be over one hundred feet in length, or shall have a draw or turntable therein for the purpose of opening the same, such notice may be: "Ten dollars fine for riding or driving on this bridge faster than a walk, or driving on more than ten head of cattle at a time," or such other sum, not to exceed twenty-five dollars, may be mentioned in such notice as such commissioner or common council shall deem proper.

Offenders.

(129) SEC. 8. Whoever shall offend against any such notice thus posted and there being, shall forfeit for every offense the sum mentioned in such notice, and the same may be collected in the name of such commissioner, city or village authorities, as the case may be. The provisions of this and the last preceding section shall extend to bridges owned and controlled by private persons, companies, or corporations, who are hereby vested with the same authority, touching said bridges, as are conferred upon townships and municipal corporations.

Construction  
of bridges by  
adjoining  
townships.

(130) SEC. 9. Whenever the commissioners of highways of any two adjoining townships in different counties shall determine that an exigency exists requiring that a bridge should be constructed on or across the county line over any stream or sink-hole, either crossing or running along the boundary line between such townships, such bridge shall be built and maintained at the equal joint expense of such townships. The commissioners of the townships interested, either of whom may give notice to the other, of meetings of said com-

missioners for the purposes mentioned in this act, shall jointly agree upon the plans and specifications for such bridge: *Provided*, That no such bridge shall be built until the money necessary to cover the cost of same shall have been raised or provided for by vote of the electors of said adjoining townships as provided for in sections two and three of this chapter. *Proviso.*

(131) SEC. 10. The amount of money chargeable to any township on account of the construction of any such bridge, being ascertained as nearly as may be, shall be reported and raised in the same manner as in this chapter provided for raising money for bridge purposes in townships, and shall be held and disbursed by the treasurers of the respective townships, and shall be drawn only for the specific purpose for which it was raised, upon orders on such treasurers respectively, signed by such two commissioners jointly, and countersigned by the clerk of the township where such orders are payable, and having endorsed thereon the certificate of such two commissioners, certifying that the labor has been actually performed or the materials furnished for which such order was given. *Money, how raised, etc.*

See section 320.

(132) SEC. 11. The word "townships," as used in the two last preceding sections, shall, for the purposes of this act, be deemed to include cities and incorporated villages, both in their relation to each other and to townships, and when the word commissioner is used with reference to townships, it shall be deemed to include the corporate authorities of cities and incorporated villages. And such commissioners or corporate authorities may make such equitable contracts with the corresponding authorities in adjoining states, as will secure the construction and maintenance of bridges over streams crossing the boundary line between this State and such adjoining state, according to the purpose and intent of this act. *Words, construction of certain.* *Contracts.*

(133) SEC. 12. The authority conferred by the three last preceding sections for the construction of bridges shall be deemed to include their rebuilding and repair. *Authority.*

(134) SEC. 13. There shall be no bridge, culvert or artificial roadway of any kind constructed in any public highway of this State, over any water course thereof having a roadway of less than sixteen feet in width, and the same shall be built of sufficient strength to safely carry a ten ton load. *Width of bridges and carrying strength.*

(135) SEC. 14. It shall be the duty of all owners, occupiers, or possessors of mills or other water works, where any race or races appertaining to the same may cross a public highway, to keep a good and sufficient bridge or bridges, not less than sixteen feet in width, with a substantial railing on each side thereof, over the same, except where said mills *Duty of owners of mills and water-works.*



have been erected and the races dug previous to the formation of said highway.

**BRIDGES OVER RACES:** Width of bridges over mill race.—Merrill v. President of Kalamazoo, 35 / 217. The exception has reference to races existing when the highway was laid out; and where a dam and race were built at the same time and the earth taken from the race was used in construction of the dam which was intended to be and was thereafter used as a highway in place of a portion of an old road destroyed by its construction, and the water was not let into the race until after a bridge had been built over the race, which, with the dam, was used instead of the old highway and bridge, the owners of the mill are liable for its maintenance.—Com'r of High. v. Martin, 88 / 115. If at the time the race was dug there was no traveled road within the limits of the highway crossing where the bridge in question was built, the mill owners cannot be held under the statute for the cost of building the same.—Merrill v. President of Kalamazoo, 35 / 212. A township can hardly be held liable for injuries caused by latent defects in a bridge over a mill-race where they do not affect the traveled part of the way and where the miller has apparently not been negligent in performing his statutory duty of looking after the condition of the bridge.—Abernethy v. Van Buren, 52 / 383. For provisions relative to the width of bridges, culverts, etc., see section 134.

When commissioner to erect or repair bridges over mill race, etc.

(136) SEC. 15. In all cases where the owner or owners, occupiers, or possessors of any such mill or mills, or other water works, shall refuse or neglect to make such bridge or bridges, or shall refuse or neglect to keep the same in good repair, it shall be the duty of the commissioner of highways of the township in which such highway may be, to proceed forthwith to erect or repair such bridge or bridges, at the expense of the person or persons whose duty it was to have erected or repaired such bridges.

See Highway Com'r v. Willard, 41 / 627.

Expenses to be charged against owner.

(137) SEC. 16. The expenses so made or incurred by said commissioner of highways, in erecting or repairing such bridge or bridges, shall be a legal charge against the owner or owners, occupiers, or possessors of such mill or mills, or other water works; and it shall be the duty of the said commissioner of highways to prosecute the person or persons so chargeable, in an action of assumpsit, for the expenses so made or incurred, and to cause the damages recovered in such prosecution to be applied toward the payment of said expenses.

Action of assumpsit.

Pleadings.

(138) SEC. 17. Whenever an action of assumpsit shall be brought, under the provisions of this act, for the recovery of expenses made or incurred in erecting or repairing any such bridge or bridges, it shall be sufficient, without setting forth the special matter, to allege in the declaration that the defendant, being indebted to the plaintiff in the amount of such expenses, according to the provisions of this act, referring to the same by its title and date of approval, undertook and promised to pay the same to the plaintiff; and to every such declaration, the defendant may plead the general issue, and may give in evidence, under such plea, any special matter in bar of the action, or in discharge of the defendant, in the same manner and with like effect, as if a special notice thereof had been given.

The commissioners are only authorized to do at the expense of the mill owners what is requisite to discharge their unperformed duty; and cannot charge them with the expense of building a bridge exceeding in width the statutory requirement.—*Merrill v. President of Kalamazoo*, 35 / 211. Upon the question of the existence and location of the highway at the time and prior to the construction of the race, an early territorial record of the survey of the road may be admissible in evidence, not as record proof of the establishment of the road, but as a permanent record of the line where the road was, its establishment being shown by other evidence.—*Id.*

(139) SEC. 18. The corporation, firm or individual, owning or operating any bridge within this State, free or toll, used for public travel, in which there shall be a draw or swing span for the passage of water craft, shall cause to be placed upon the approaches to such bridge, at either end thereof, not farther than ten feet from the landward ends of such draw or swing span, a gate, gates or other barriers of not less than four and one-half feet in height, and of such design, shape and strength as to effectually bar the progress of teams, animals and foot passengers and prevent them from passing upon such draw or swing span when such gates or other barriers are closed.

Approaches to swing or draw bridges, protection of.

A bicyclist, who, in the dark, rides off the end of an unguarded drawbridge open for the passage of a boat, is not, as a matter of law, guilty of contributory negligence.—*Scharman v. Bay Co. Bridge Commission*, 158 / 77.

(140) SEC. 19. Such gate, gates or other barriers shall be at all times closed before such draw or swing span is opened for the passage of water craft, or any other purpose, and shall be kept closed until such draw or swing is closed, and such bridge ready for public travel. And for each and every time that the draw or swing span of any such bridge is opened for the passage of water craft, or any other purpose, without such gate, gates or other barriers being closed, or without the same being kept closed during the entire time such draw or swing is open, the corporation, firm or individual owning or operating such bridge shall forfeit the sum of ten dollars, to be collected according to the provisions of chapter two hundred ninety-one of Howell's annotated statutes, being chapter two hundred sixteen of the compiled laws of eighteen hundred seventy-one and the amendments thereto.

Closing of gates.

Penalty for violation.

(141) SEC. 20. Any corporation, firm or individual owning or operating any bridge within this State, used for public travel, having a draw or swing span therein, who shall neglect or refuse to construct and maintain such safety gate, gates or other barriers so directed as aforesaid, upon either end of such bridge, shall forfeit for every such neglect the sum of one hundred dollars, and the further sum of ten dollars for each day that such refusal or neglect shall continue, which said sum so forfeited as aforesaid shall be collected as provided in section nineteen of this chapter.

Penalty for neglect to maintain safety gates

(142) SEC. 21. It is hereby made the duty of the several prosecuting attorneys of this State, to make personal inspection of all bridges lying wholly or partly within their respective counties, which have a draw or swing span therein, and if

Duty of prosecuting attorneys.

such gate, gates or other barriers have not been placed upon any such bridge, to at once proceed against the corporation, firm or individual owning or operating such bridge for non-compliance with this act. Such prosecuting attorneys shall be entitled to receive the sum of ten cents per mile, going and returning, for every mile necessarily traveled in making inspection as aforesaid of any bridge within their jurisdiction, to be paid by the county.

Actions for  
recovery of  
penalties and  
forfeitures.

(143) SEC. 22. Actions for the recovery of the forfeitures and penalties incurred by reason of non-compliance with the provisions of this act shall be brought before the circuit court or circuit court commissioner of the county in which such bridge or any part thereof is situate, but such trial shall be had by the court unless such defendants demand a jury. The fees of such commissioner, witnesses, officers and jury, if there be one, shall be the same as in criminal cases in justice courts, and shall be paid by the county.

Writ of  
mandamus.

(144) SEC. 23. The circuit courts shall have power within their respective counties to compel compliance with the provisions of this act by writ of mandamus.

Fast driving  
over bridges.

(145) SEC. 24. Whenever any county in this State shall own any bridge across a navigable stream the board of supervisors may make rules to prevent fast riding or driving thereon, and such reasonable rules as may be so made shall have full force and effect as to all persons passing over such bridge; and any person violating the same shall be liable to a penalty as hereinafter provided for such violation.

Notice on  
bridges.

(146) SEC. 25. No person shall be so liable unless those in charge of said bridge shall cause to be placed and maintained on said bridge a notice in large painted letters, as follows: "Five dollars fine for driving or riding faster than a walk on or across this bridge." Any person so offending shall be deemed guilty of a misdemeanor and, on conviction, shall be liable to a fine not to exceed five dollars, and in default of the payment of such fine, to imprisonment in the county jail for a period not to exceed ten days.

Repair of  
bridges in  
villages.

(147) SEC. 26. The bridges within the limits of any village in the highways leading into or through said village which have been or shall hereafter be laid out by the commissioners of highways of the township or townships in which said village may be located or established by any other lawful authority, except the authority of such village, shall be built, controlled and kept in repair by the township or townships in which they may be located, the same as if said village were not incorporated, and all the other bridges in said village shall be built, controlled and kept in repair by said village.

#### INTER-MUNICIPALITY BRIDGE OR ROAD.

Application to  
supervisors for  
order to repair  
road or bridge.

(148) SEC. 27. Whenever any township, city or such incorporated village as mentioned hereafter in this section, shall be desirous of having a bridge or road constructed, which

would, when constructed, be in more than one township, or be partly in one township or more than one, and partly within a city or an incorporated village, or having any such road or bridge rebuilt or repaired, and any such township, city or village, shall fail upon request to join in building, rebuilding or repairing such bridge or road or to contribute its just share to the building, rebuilding or repairing thereof, any such township, city or village desiring the building, rebuilding or repairing of such bridge or road may, by its township board, its common council or village council, as the case may be, by petition, in the form of a resolution or otherwise, apply to the board of supervisors of the county for an order for the construction, rebuilding or repairing of such bridge or road, and for filing the respective proportions which each township, city and village shall contribute for the construction, rebuilding or repairing of such bridge or road and for keeping the same in repair, as well as for deciding the kind of bridge or road to be constructed.

See sections 320, 324.

A majority of the board is sufficient to carry a resolution ordering a bridge to be built between adjoining townships.—*Horner v. Bd. of Supervisors*, 147 / 581.

(149) SEC. 28. Unless such petition is to be presented to the annual meeting of said board of supervisors, or at an earlier meeting already appointed by the board, to be held at least thirty days prior to such annual meeting, it may contain a request for a special meeting of said board, and may be delivered to the clerk of said board, who shall have authority, and whose duty it shall be, to call a special meeting of said board not more than twenty nor less than ten days from the time he shall receive the petition, and it shall be his duty to inform all the members of said board to be found in the county, of such meeting, and the purpose thereof, at least five days before such meeting is to be held, and at whatever meeting such petition is to be heard, and it shall be the duty of such petitioners to give notice, in writing, to the township board of each township named and to the common council of any city, as well as to the village council of any village named, of their intention to ask for the hearing of the same at such meeting, and of the purpose thereof, which notice shall be delivered to the clerk of every such township, city or village, and if such clerk is not readily found, then to any member of the township board, or the mayor, or some member of the common council of the city, or a member of the village council, as the case may be, at least seven days before said board is to be asked to hear said petition.

Request for special meeting of board.

(150) SEC. 29. At such meeting said board of supervisors shall have power, and it shall be their duty, to grant or refuse the prayer of said petition. And if they shall grant the same, they shall describe the kind of bridge or road to be built and the limit of cost which it shall not exceed, and for

Duty of supervisors.

the purpose of facilitating their determination of the kind and cost of the bridge or road or the building or repairing thereof, each township, city and village named in the petition may present a plan or plans and specifications of such proposed bridge or road or the building or repair thereof, with or without drawings, and an estimate of each as to cost. Said board shall also determine the quota or proportion which each township, city and village named shall contribute thereto, and whether the whole amount shall be raised the first year, or a part, and what part the first and what part the second year, but no part of it shall be deferred more than two years. They shall also determine the quota of each towards keeping the same in repair, which shall remain the same till altered by said board, or by the consent of each township, city and village, which is a party to this proceeding.

Horner v. Bd. of Supervisors, 147 / 581.

County treasurer to open account with township, etc.

County clerk to serve copy of order.

Assessment, etc., of taxes.

Bond of collectors.

Warrant for collection of taxes.

(151) SEC. 30. Upon determining that such bridge or road shall be built, rebuilt or repaired, and the other matters mentioned in the preceding sections, then said board of supervisors shall order the county treasurer to open an account with each township, city or village, whose quota they have determined, under the designation of "bridge or road fund" (naming the bridge or road), charging to each the quota so assigned by the board, which order such treasurer shall be bound to obey; and such board shall thereupon, through their clerk, within five days after such order, serve a copy of the same upon the officer and all officers of each township, city and village authorized by law to assess township taxes in such township, city taxes in such city, and village taxes in such village, as well as upon the clerk of each respectively, and upon the officer or officers in each township, city and village named, authorized by law to collect such township, city or village taxes respectively; and thereupon such assessing officer or officers shall be bound to assess and such collecting officer to collect in such several townships, cities and villages, respectively, the taxes for the same assigned to each respectively as its quota for the year in which by the order of the board, the same is to be raised and this they shall proceed to do without the necessity of waiting any order therefor from any township, city or village authority. But each of said collectors shall, before proceeding to collect any such tax, give to the county treasurer a bond, with at least one good surety, in double of the amount of such tax to be collected by him for the year, and such collectors shall each be entitled to the same percentage or compensation as allowed by law for collecting township, city or village taxes respectively, which may be added to the tax by the collector if not included in the amount assessed. And the board of supervisors shall issue their warrants to each of said collecting

officers for the collection of such taxes and require each to pay over the respective amounts to the county treasurer to apply on such bridge or road fund, which warrant shall give to each of said collecting officers the like powers and impose the like duties as are or may be given to or imposed upon those collecting township taxes except as herein otherwise provided. Each of such collectors shall, as required by his warrant, pay over all funds collected, to the county treasurer and take his receipt therefor.

(152) SEC. 31. Said board of supervisors may, as a board or through a committee of three of their members as their agent, at any time after they have made the order for raising such bridge or road fund by taxes as in their opinion the public convenience require, contract for the building, rebuilding or repairing of said bridge or road as an entirety, or for any material or labor for the same if they should prefer to build, rebuild or repair it without contract as a whole (in which case they or their committee may employ an overseer) but in all cases to be payable only out of said bridge or road fund when and as collected. If the building, rebuilding or repairing of the bridge, or road, including materials, is let by contract, notice of not less than three consecutive weeks of the time and place of letting shall be published in some newspaper printed in the county, if any, or if none is published in the county, then by written or printed notice posted for at least three weeks in three of the most public places in each township, city or village named in the petition, of the time and place at which contract shall be let. The board also, as such, or through its committee of three acting as its agents, shall determine the amount and time when partial payments shall be made when this has not been fixed by special contract, as well as to determine when and whether such bridge or road or the building, rebuilding or repair thereof is completed according to the plan or according to contract. But if the township board of each township and the city or village council of each city or village, in behalf of which it was built, shall admit to such board or its said committee and agents, its full completion, this shall be conclusive of the question.

Board may let contracts as entirety or in parcels.

Notice of letting.

Board to determine amount and time of payments, etc.

(153) SEC. 32. The board shall cause to be kept by its clerk a full account of all expenses to the county in carrying this act into effect in any such case, and when the bridge or road or the rebuilding or repair thereof is completed, they shall through their clerk, certify such amounts to the county treasurer, who shall charge in the account of such bridge or road fund to each township, city or village, its quota, in the same ratio established by the board for the bridge or road; and this amount together with any balance of the bridge or road fund unpaid shall be raised by tax by the order of the board in each township, city and village named, by tax to be assessed, collected and paid by the same officers and in the

Expense to county, how certified and paid.

same manner as above required for the construction, rebuilding or repairing of said bridge or road.

## CHAPTER IX.

### OPENING OF PRIVATE ROADS AND TEMPORARY HIGHWAYS.

Notice of application for private road.

(154) SECTION 1. Whenever application shall be made to the commissioner of highways of any township for a private road, he shall give notice in writing to the owner or occupant of the land over which the road is proposed to be laid out, to meet on a day and at a place certain, which shall not be more than ten nor less than five days from the time of service of such notice, for the purpose of aiding in the striking of a jury to determine as to the necessity of such road; and if the land over which it is proposed to lay such road be non-resident and the owner thereof does not reside in the county, such notice shall be served in the same manner as is provided in case of bearing on laying out public roads, and proof of such service or posting shall be made in like manner.

PRIVATE ROADS: One who has already a private right of way is not obliged to wait until his easement expires before instituting proceedings to obtain a continuance of, or substitute for it, but may move a reasonable time before it expires.—*Palmer v. High. Com'r*, 49 / 46. Ten days' notice.—*Ayres v. Richards*, 38 / 214. Ways must be either public or private; there is no intermediate species of way for any purpose of passage.—*Tillman v. People*, 12 / 401. The statute designed to cure defects in the laying out and recording highways has no application to mere private ways, but is confined to public highways.—*Green v. Bellitz*, 34 / 513. And a private way is not converted into a public way by user.—*Id.* Property cannot be condemned for a private way as a mere convenience, but only when there is no other access to the petitioner's land, and when condemned its use must be limited by absolute necessity and confined to the petitioner and the owner.—*Ayres v. Richards*, 38 / 214. The owner of a private road is entitled to make use of the same for any and all purposes for which a road may be used; he may fence it, macadamize, plank or pave it and do any other act which may be necessary to promote its beneficial use. The necessity and reasonableness of the means made use of to adapt the road to his use are questions of fact, to be determined by the trial court, and its findings in that regard are conclusive upon the appellate court.—*Harvey v. Crane*, 85 / 316. The owner of a forty acre tract which is cut off from the highway by another forty acre parcel which was at one time held by a common grantor, has a way of necessity across the intervening parcel to such highway; such owner of the easement is not required to resort to the condemnation of a private road under this section.—*Moore v. White*, 159 / 460.

TIME OF NOTICE: In a five days' notice it appears that both the day of service and the day of meeting would have to be excluded.—*Platt v. High Com'r*, 38 / 247.

Jury, how formed.

(155) SEC. 2. At the time and place designated the commissioner shall direct some disinterested person to write down the names of twelve disinterested freeholders, from which list the owner or occupant of the land to be crossed by such road and the applicant for the road shall strike out three names each, and the balance remaining on the list shall form the jury. In case the owner or occupant or the applicant shall not be present, or being present shall neglect or refuse to strike, the commissioner shall strike for the party so absent or neglecting or refusing. The commissioner shall issue a citation to such freeholders to appear before him at a

Necessity of road, determination of.

time certain within forty-eight hours to determine as to the necessity of such road and the damages resulting therefrom in case such road shall be deemed necessary, and the hearing of the application shall then stand continued until the time when the citation is returnable: Provided, however, That when from any cause a sufficient number of jurors to form a panel shall not appear at the given time, the commissioner may direct some disinterested freeholder to write down the names of disinterested freeholders enough to equal twice the number of vacancies to be filled. The commissioner shall strike off one-half of the names from such list, and shall issue a citation to such freeholders to appear before him forthwith. Proviso.

Am. 1911, Act 64.

**FREEHOLDERS:** Jurors in proceedings to lay out a private way are not disqualified by having served in previous ineffectual proceedings, taken by the same person, for obtaining another right of way to reach the same lands.—*Palmer v. High. Com'r*, 49/45. Where a party to condemnation proceedings, instead of striking off a juror says he does not care which name is struck off and that the highway commissioner may strike one off himself, he cannot afterward object to the course taken.—*Id.* As to whether the person writing down the eighteen names, should accompany the list with a statement or return that they are disinterested freeholders, see *People v. Brighton*, 20/57. The officer who summons the jury is bound to show by his return that he has summoned such as answer the description in the writ.—*People v. Brighton*, 20/71.

**Note.**—Previous to the amendment of this section, making the venire returnable in forty-eight hours, it was required that the same be returned forthwith. Under this former statute it was held, in the case above cited, that making it returnable the next day at one o'clock, sufficiently met the requirements. See *Palmer v. High. Com'r*, 49/45.

(156) **SEC. 3.** Such freeholders, when met, shall be sworn by the commissioner well and truly to examine in regard to the necessity of such road, and in case they shall decide that such road is necessary, to justly and impartially appraise the damages of the owner or owners, or occupant of the land, by reason of laying out such road. Determination of jury.

The jury must find the road to be laid necessary and that it is necessary to take the land in question, as well as determining the damages.—*People v. Brighton*, 20/71; *Ayres v. Richards*, 38/214; *Rundell v. Blakeslee*, 47/575. It is not enough to say that they "adjudge and determine that a private highway be established."—*Rundell v. Blakeslee*, 47/575.

(157) **SEC. 4.** If the jury shall determine that the road so applied for is necessary, they shall make and subscribe a certificate of such determination, and also their appraisal of the damages, and shall deliver the same to the commissioner; and the commissioner shall thereupon lay out the road, describing the same particularly by its bounds, courses, and distances, and shall cause a record thereof to be made in the clerk's office of the proper township, which shall be recorded in the same manner as is required in the case of public roads. Certificate of jury.

Where the proceedings on certiorari show that no record was made and recorded in the office of the township clerk, the proceedings of the highway commissioner laying out the road, were quashed.—*Hall v. Pettit*, 88/158. Also proceedings were dismissed where the record contained no recital that eighteen disinterested freeholders were chosen, or that six names were struck off, or that a citation was issued by the commissioner to such freeholders, or that the jury were sworn, or that the commissioner proceeded to lay out the road.—*Id.* Proceedings will also be quashed where the record shows no



evidence that the petitioner had no other access to his land.—*Id.* As to omissions from record, see also *Taymouth v. Koehler*, 35 / 22.  
See section 7 and notes.

How damages paid.

(158) SEC. 5. The damages awarded to the owner or occupant of the land through which such road shall be laid, when thus ascertained, together with the expenses of the proceedings, shall be paid to the commissioner by the person applying for the road, which damages shall be paid or tendered by the commissioner to such owner or occupant, and when so paid or tendered the commissioner shall proceed to open the road.

If the owner of the land taken accepts the compensation awarded by the jury he cannot afterward object to the competency of the jurors.—*Chatterton v. Parrot*, 46 / 432.

Width of private roads.

(159) SEC. 6. Private roads shall not be less than one rod in width, and when laid out as above provided, shall be for the use of the applicant, his heirs and assigns, but not to be converted to any other use or purpose than that of a road; but the owner or occupant of the land through which such road shall be laid out shall not be prevented from making use thereof as a road, if he shall signify his intention of so doing to the jury at the time of laying out such road, and before the appraisal of the damages by them.

A private way cannot be converted into a public highway without compensation to the owner of the lands over which it runs.—*Ayres v. Richards*, 41 / 680. A private way across private property can be closed by the owner of the land; and the fact that after proceedings to lay out such a road as a public highway had been quashed, the owner still left it open and in public use, cannot be used to reduce his damages on later proceedings to open it to the public.—*Id.* The public are not entitled to use a private way unless it is dedicated to their use.—*Ward v. Warner*, 8 / 508.

Temporary highways.

(160) SEC. 7. Whenever any owner of any timbered land, not less than forty acres, shall wish to have a temporary highway laid out, he may in writing make application to the commissioner of highways of the proper township for that purpose, who shall proceed to lay out such temporary highway in all respects as provided by law in relation to laying out public highways, except as hereinafter provided.

Am. 1911, Act 153.

Application.

(161) SEC. 8. When any such application shall be made the commissioner of highways of the township in which such road is to be located shall immediately certify the same to the township board of said township and the highway commissioner, and such township board shall at once proceed to view the premises described, and if the said highway commissioner and the township board shall determine that said highway is necessary for the purpose of removing the timber from such lands they shall certify the same under their hands and at the same time shall fix and determine the length of time that such highway shall be necessary and shall state such time in the record, and at the expiration of such time said

highway shall cease: Provided, That no logging railroad shall be laid out or established in, upon or along any such temporary highways, except that during the ten years after the passage of this amendment permission may be given by the commissioner of highways to lay out and establish such logging railroad, but such railroads shall not be operated or maintained after ten years from the passage of this amendment.

Proviso,  
logging rail-  
road.

Am. Id.

(162) SEC. 9. No such highway shall be laid out along and upon and so as to occupy any road made or caused to be made by the owner of any land or by any person with the consent of such owner and used by the person or persons who made the same unless such owner shall consent thereto in writing. If the owner of the land across which any such highway is desired shall appear before the commissioner at the time and place of hearing and shall designate a route for such highway which shall be, in the opinion of such commissioner, reasonably direct and practicable for the purpose desired by such applicant, it shall be the duty of the commissioner, in case he and the township board determine such highway to be necessary, to lay the same out upon the route designated by such owner. Such temporary highways shall be private highways and all the expenses of their laying out, which expenses shall include the compensation due the township board and highway commissioner for such services and all damages that may be awarded on account of the taking of lands therefor, shall be paid to the commissioner by the persons applying for the same and upon such payment they may enter upon, open and work such highways at their own and sole expense, but no trees shall be cut therein except as shall be necessary to make a track or tracks.

Consent of  
owner, etc.

To be private  
highways.

Damages.

(163) SEC. 10. In case such highway is only to be used in the winter time such facts shall be set up in the application and also in the finding of the commissioner and township board and this shall be taken into consideration in awarding damages to the owners of the land crossed.

Where used  
only in winter.

## CHAPTER X.

### PENALTIES AND FORFEITURES.

(164) SECTION 1. Any commissioner or overseer of highways, having accepted such office, shall, for every neglect of the duties thereof, forfeit the sum of ten dollars.

Neglect of  
duties.

(165) SEC. 2. Any commissioner or overseer may be prosecuted by information or indictment for any deficiency in the highways occasioned or continued by his fault or neg-

Prosecution  
for neglect,  
etc.

lect; and on conviction thereof may be fined in any sum not exceeding fifty dollars.

Prosecution  
of overseer.

(166) SEC. 3. It shall be the duty of the commissioner, whenever any competent resident of his township shall make complaint in writing that any overseer in such township has refused or neglected to perform any of the duties required of him by law, and shall give or offer to such commissioner sufficient security to indemnify him against the costs which may be incurred in prosecuting for the penalty annexed to such refusal or neglect, forthwith to prosecute such overseer in the name of the people of this State for the recovery of such penalty.

Obstruction  
of highway,  
river, ditch,  
etc.

(167) SEC. 4. Whoever shall wilfully obstruct the navigation of any river or stream, which is now or may hereafter be declared a public highway, by felling any tree therein or by putting into any such river or stream any refuse lumber, slabs, or other waste materials, or who shall wilfully obstruct any highway, or fill up or place any obstructions in any ditch constructed for draining the water from any highway, or who shall injure any highway by diverting any creek, or by obstructing any water course or sluice, shall forfeit for every such offense a sum not exceeding twenty-five dollars.

**OBSTRUCTING HIGHWAYS:** An unauthorized obstruction of a public street is a public nuisance, which any citizen desiring to travel along the street may abate, if he can do so without a breach of the peace.—*Plank Road Co. v. Hilton*, 69/115. Persons using public highways must use them with care and a due regard for the rights of others, and those who use them for the customary purpose of travel and passage have the first right, and their use must not be obstructed unless under exceptional circumstances.—*Burford v. Grand Rapids*, 53/98. The defense that a ditch laid along a public highway and used for draining water therefrom was not legally laid out and established cannot be pleaded in an action to recover the penalty by this section imposed.—*Hines v. Darling*, 99/47. The court has no power to direct a verdict for more than six cents; it is for the jury to say how much more the penalty shall be.—*Id.* It is "wilfully" obstructing a public ditch for one who knows its character to purposely and perversely fill it up in a permanent way. He may bridge it or grade the approach, but must not obstruct the ditch or the highway.—*High. Com'r v. Ely*, 54/173. The right of navigation, though paramount, is not exclusive, and cannot be so exercised as to wantonly destroy private rights or property that can be enjoyed consistently with it, such as the right to maintain ice fields, or stake-nets, or to run logs, or establish boom limits and dock lines.—*Ice Company v. Steamer "Excelsior"*, 44/229. "Free navigation" is not necessarily the unobstructed navigation of a stream in its natural condition.—*Benjamin v. Manistee River Imp. Co.*, 42/628. It is not every obstruction to a highway that is a nuisance.—*People v. Carpenter*, 1/273, 288; *People v. Jackson*, 7/432. If any individual is injured by an obstruction he will have a right of action therefor.—*Id.*, 7/432, 445. See *Wicks v. Ross*, 37/464; *G. R. & I. R. R. Co. v. Helsel*, 38/62. A party contributing to the obstruction of a way cannot recover damages against another contributing to the same obstruction, where the removal of the part caused by himself would afford him ample passage way.—*Roberts v. Fitzgerald*, 33/4. As to when obstructions are indictable and when not.—See *People v. Jackson*, 7/432. Obstructing water-course, see *Com'r of Highways v. Sperling*, 120/493. The unlawful obstruction of a public highway is a penal offense, and it is the duty of highway commissioners to keep highways free from obstructions.—*Fowles v. Hayden*, 129/587. The owner of the soil is not punishable for a nuisance in using any part of a highway in such a manner as not to interfere with the public convenience.—*Clark v. Lake St. Clair, etc. Co.*, 24/508. Action for recovery of penalty.—*La Barre v. Bent*, 154/520.

**BOOMING COMPANIES:** A boom company is liable in damages for needlessly or wilfully obstructing a navigable stream to the hindrance and consequent injury of persons driving their own logs.—*Watts v. Tittabawassee Boom Co.*, 52/203. The private appropriation of a part of the bed of a small stream not navigable except for floatage is neither a purpresture nor a nuisance, nor a public grievance of any sort, unless the public use is thereby unreasonably abridged or inconvenienced.—*Att'y Gen. v. Ewart Booming Co.*, 34/463. Diversion of watercourse.—See *Hilliker v. Coleman*, 73/170.

See section 191 and notes to sections 111 and 112.

(168) SEC. 5. Whoever shall wilfully destroy, remove, injure, or deface any mile-stone, mile-board, guide-post, or guide-board erected on any highway, or shall wilfully injure or deface any inscription or device placed thereupon, or who shall wilfully injure or deface any watering-trough, basin, or fountain placed upon the highway for the use of the public or for ornament, shall forfeit for each offense the sum of twenty-five dollars.

Injury to mile-board, watering trough, etc.

(169) SEC. 6. Any person who shall wilfully injure, deface, tear, or destroy any tree or shrub planted along the margin of the highway, or purposely left there for shade or ornament, or who shall hitch any horse to any such tree, by means of which the same shall suffer injury, or who shall negligently or carelessly, by any other means, suffer any horse or other beast driven by or for him, or any beast belonging to him and lawfully in the highway, to break down, destroy, or injure any tree or shrub not his own, standing for use or ornament in any highway, shall be liable to an action for damages in a sum not less than one nor more than twenty-five dollars for each offense, to be recovered at the suit and for the benefit of the owner or tenant of the land in front of which such tree or shrub stands, or at the suit of the commissioner in whose township such tree or shrub may be situated, for the benefit of the highway improvement fund of such township.

Injury to trees, ornaments; hitching of horses to trees, etc.

**SHADE TREES:** The policy of our laws favors the planting and preservation of shade trees in the public streets where they do not constitute actual obstruction.—*Clark v. Dasso*, 34/86. A highway commissioner who has wantonly sold trees in a highway cannot justify his action when sued in trespass by the owner by the statute authorizing him under certain circumstances to order the removal of trees from the highway.—*Id.* A telephone company, authorized to erect its line along a country highway, has the right to cut away obstructing branches of trees, to admit of free passage of the wires, without first giving the abutting proprietor an opportunity to do so, but it will be answerable to him for any unnecessary, improper or excessive cutting.—*Wyant v. Cen. Tel. Co.*, 123/51. See section 191.

(170) SEC. 7. Whoever shall injure any bridge maintained at the public charge, or any public road, by drawing logs or timber on the surface of any such road or bridge, or by any other act, shall be liable in damages to three times the amount of the injury, to be recovered in an action of trespass or on the case, by the commissioner of highways of the township within which the injury was done, in his name of office, to be expended by him in the repair of roads in his township.

Injury to bridges.

**TREBLE DAMAGES:** Treble damages are punitive and ought not to be imposed in cases not clearly defined, or not involving something like wilful wrong. They are for injury to the structure and not to public travel.—*Shepard v. Gates*, 50/495; *Lane v. Ruhl*, 103/41. Giving treble damages for injuries to bridges, does not apply to cases of mere negligence, but only to those involving something of wilful misconduct.—*St. Ignace Twp. Overseer v. Pelton*, 129/31.

**WHO TO PROSECUTE:** See *Denver v. White River Boom Co.*, 51/472; *Highway Com'r v. Stockman*, 5/528. See section 191.

(171) SEC. 8. If any trees shall fall or be fallen by any person from any occupied land into any highway, any per-

Removal of trees felled in highways.

son may give notice to the occupant of the land from which such trees shall have fallen to remove the same in two days, and if such tree shall not be removed within that time, but shall continue in such highway, such occupant shall forfeit the sum of fifty cents for every day thereafter until such tree shall be removed.

Deposits of  
garbage, rub-  
bish, etc.

(172) SEC. 9. If any person or persons unless duly authorized by the highway commissioner of the township shall put any garbage, rubbish or waste material of any kind into any highway of any township of this State, with the intent to permit the same to remain therein, to the injury in any way of said highway, or to the annoyance of the citizens of this State, or any of them, every person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit and pay a sum not less than five dollars nor more than ten dollars, together with the costs of prosecution, and in default in the payment thereof shall be imprisoned in the county jail of the county in which such conviction may be had not exceeding ten days, or both such fine and imprisonment in the discretion of the court.

## CHAPTER XI.

### SHADE TREES IN HIGHWAYS.

Planting and  
preservation  
of trees.

(173) SECTION 1. Shade trees shall be planted along both sides of the public highways, at the uniform distance, as near as may be, of sixty feet apart, and not less than twenty-three nor more than twenty-five feet from the center line of the highway, but the township board of any township may direct as to the distance which trees may be set from each other or from the outer line of the highway. All trees now growing upon the sides of any highway, and all trees that may be hereafter planted thereon, standing more than sixty feet apart, shall be preserved, and shall not be injured or removed, unless by direction of the commissioner of highways, and with the consent of the owner of the adjoining land, unless such trees shall interfere with or obstruct the travel on the highway: Provided, That the provisions of this chapter in whole or in part shall not be deemed mandatory in townships in which the electors may by vote at a township meeting, thus determine.

Proviso.

The policy of our laws favors the planting and preservation of shade trees in the public streets where they do not constitute actual obstruction.—*Clark v. Dasso*, 34 / 86; *People's Ice Co. v. The "Excelsior,"* 44 / 229.

REMOVAL OF TREES: A street railway, authorized by the proper township authorities to lay tracks, erect trolley poles and string wires, is by implication authorized to remove obstructions, including shade trees, without compensation to the owner, when such removal is necessary for the construction of the railway as located by the township authorities.—*Miller v. Railway Co.*, 125 / 171. The law, however, does not give the right to remove shade trees without notice to the owner, and an opportunity given him to remove them.—*Id.* See *De Boer v. Adams*, 159 / 560.

(174) SEC. 2. In townships where trees are not planted and growing along the highways as required by section one of this chapter the highway commissioner may cause to be set out each year as many trees as he may deem advisable in his township where the adjoining lands are cleared, but shall not expend to exceed ten per centum of the road repair tax in any one year for such purpose. The commissioner shall particularly attend to the planting of such trees, and shall allow no unsuitable tree nor any tree lacking sufficient roots or vitality to be planted, and he shall have the charge and care of the same: Provided, however, That the cost shall not exceed twenty-five cents for each tree so set out. Commissioner to cause trees to be set out.

(175) SEC. 3. Telegraph companies are authorized to enter upon, and construct and maintain lines of telegraph through, along, and upon any of the public roads and highways, or across or under any of the waters within the limits of this State, by the erection of the necessary fixtures, including posts, piers or abutments for sustaining the cords or wires of such lines: Provided, That said telegraph companies before the construction and erection of said lines and poles, shall first obtain the consent of the duly constituted authorities of the city, village or township through or along which said telegraph lines and poles are to be constructed and erected: Provided, further, That the same shall not be so constructed as to incommode the public use of said roads or highways, or injuriously interrupt the navigation of said waters; nor shall this act be so construed as to authorize the construction of any bridge across any of the waters of this State: Provided further, That this act shall not be construed to authorize any such association to injure, deface, tear, cut down, or destroy any tree or shrub planted along the margin of any highway in this State, or purposely left there for shade or ornament. Said association, instead of running or placing their wires on posts, may, if they choose, run or place the same under ground, with a suitable or proper covering for the protection of the same. Telegraph companies may construct lines of telegraph.

(176) SEC. 4. Telephone companies shall have power to construct and maintain lines of wire or other material, for use in the transmission of telephonic messages along, over, across, or under any public places, streets and highways, and across or under any of the waters in this State, with all necessary erections and fixtures therefor: Provided, That said telephone companies, before the construction and erection of said telephone lines and poles, shall first obtain the consent of the duly constituted authorities of the city, village or township through or along which said telephone lines and poles are to be constructed and erected: Provided further, That the same shall not injuriously interfere with other public uses of the said places, streets and highways, or injure, deface, tear, cut down, or destroy any tree or shrub planted along the margin of any highway in this State, or purposely Telephone companies may construct lines.

left there for shade or ornament nor shall the same interfere with the navigation of said waters, or the running of railway trains.

See Mich. Tel. Co. v. Benton Harbor City, 121/512. A person desiring to move a building along a public street upon which telephone lines are maintained cannot do so in disregard of the rights of the telephone company, such use of streets not being an ordinary but an extraordinary one.—Kibbie Telephone Co. v. Landphere, 151/309. An adjoining property owner may recover for injuries to his trees that project into the highway and that may be cut or trimmed by a telephone company whose wires occupy the highway.—Boland v. Wasthenaw Home Telephone Co., 161/315.

## CHAPTER XII.

### GENERAL DUTIES OF COMMISSIONERS AND OVERSEERS.

Oath and  
bond of com-  
missioner.

Of overseers.

Bonds, where  
filed.

(177) SECTION 1. Each commissioner of highways, before entering upon the duties of his office, and within the time limited by law for filing his official oath, shall give bonds, with one or more sufficient sureties, to the township, in the penal sum of one thousand dollars, to be approved by the supervisor or township clerk, conditioned for the faithful performance of the duties of his office, and the faithful disbursement of all moneys that may come into his hands by virtue of his office. The commissioner may require any one or all of the overseers of highways of his township, before entering upon the duties of their office, to give bond with one or more sufficient sureties in such sum as he may require and to be approved by him, conditioned for the faithful performance of the duties of their office, and the faithful disbursement of all moneys that may come into their hands by virtue of their office. The bonds mentioned in this section shall be filed with the township clerk, who shall safely keep the same in his office.

DUTIES AND POWERS: High. Com'rs v. Martin, 4/560. Where a highway commissioner entered upon the duties of his office without giving bonds, and issued an otherwise lawful order in payment of labor, it was held binding upon the township.—Mackenzie v. Baraga Twp., 39/556.

Appointment  
of overseer.

Notice of ap-  
pointment.

Expenditures  
over \$50.

(178) SEC. 2. If any person chosen to the office of overseer shall refuse to serve, or if his office shall become vacant, the commissioner shall, by warrant under his hand, appoint some other person in his stead; and the overseer so appointed or designated shall have the same powers, be subject to the same orders, and liable to the same penalties as overseers chosen at township meetings. The commissioner making such appointment or designation shall cause such warrant to be filed in the office of the township clerk, who shall forthwith give notice thereof to the person so appointed or designated, who shall give written notice of his acceptance to such clerk within ten days after receiving such notice.

(179) SEC. 3. In all cases involving an expenditure of an amount over fifty dollars and not exceeding five hundred

dollars, in the repairing or construction of roads or bridges in any township of this State, the commissioner shall submit the proposed expenditure to the township board, and, upon the approval of the said board, the commissioner may make such repairs or cause them to be made; may do the construction work or cause it to be done; may buy the necessary materials and hire the necessary help, but if the proposed expenditure is of an amount greater than five hundred dollars, the commissioner shall first submit the same to the township board, and upon approval of the said board the commissioners shall advertise for sealed proposals for the doing of such work and the making of such repairs, and together with the township clerk, subject to approval of the township board, shall contract, with the lowest bidder giving good and sufficient security for the performance of the work: When over \$500. Provided, That in case it shall appear to the commissioner and board acting together, in such manner that it seems to them clearly shown, that there has been collusion among the bidders, they may contract privately with any one of the bidders or with some one who was not a bidder, but at a price not to exceed that of the lowest bidder. Sealed proposals. The contract so made shall be approved in writing by the supervisor in order to be valid as against the township. Provido, private contract. Not less than ten days notice shall be given by the commissioner of the time and place of letting such contract by putting up notices in at least five of the most public places in his township. Approval and notice. Upon performance of the work by the contractor, if approved and accepted by the commissioner and supervisor, there shall be drawn and signed by such commissioner, and countersigned by the township clerk, orders upon the township treasurer for the amount of said contract. It shall be unlawful for any township officer to be in any way interested directly or indirectly in any such contract. Any contract in which any such township officer is so interested shall be absolutely void: Provido, day labor. Provided, however, That in case the township board shall decide to do the work by day labor, the plans and specifications together with all bids received thereon, and the reason, in writing, for not letting the job by contract, shall be filed in the office of the township clerk.

Am. 1911, Act 118.

**LETING CONTRACTS:** The security should be proposed and tendered in connection with the bid and at the same time, so that the acceptance of bids and the closing up of the contract can be accomplished at once, and if any delay is necessary it should be by adjournment. Where without any adjournment, there was a delay of several days after the bidding, to allow the accepted bidder to procure sureties, and then, upon his failure to make the contract, the work was let to the next lowest bidder, the proceeding was held irregular.—People v. Baraga Twp., 39/556. The commissioner has no right to contract without bids for work which the statute requires to be let only on sealed proposals.—Beard v. Burdell Twp., 58/245. See Mackey v. Columbus Twp., 71/227.

(180) SEC. 4. Upon the performance of contracts for labor, or for the furnishing of materials according to the provisions of this act, the commissioner of highways shall make Payments for material or labor.



payment therefor by orders upon the township treasurer, which orders shall be signed by such commissioner and countersigned by the township clerk, and no money applicable to any such purpose shall be paid by such treasurer excepting upon such orders, accompanied by the certificate of such commissioner, that the labor has been actually performed, or the contract fulfilled, or materials furnished for the payment of which such order was drawn; and such commissioner shall not draw, nor shall any clerk countersign, any order in excess of the funds at the time belonging in the treasury, applicable to the payment of the same, or that may have been voted for the purpose, nor shall any such commissioner make any contract, or issue any evidence of indebtedness or do any other act implying any obligation upon his township except as expressly authorized by statute; but if any contract entered into with such commissioner, within the scope of his authority, by any person acting in good faith for the performance of labor or the furnishing of materials to such township shall have been in whole or in part in good faith performed without actual or constructive notice or knowledge of any illegality or irregularity in such contract, and the benefit thereof shall have been received by such township, and the same be a benefit for which such township might, through such commissioner, have lawfully contracted and paid and may lawfully make use of, such township shall, notwithstanding technical irregularities in such contract, or the proceedings antecedent thereto, or violations of the provisions of this act by such commissioner, be liable the same as a natural person, to pay for such benefits to the person entitled thereto; but the amount to be paid shall in no case exceed the stipulated contract price, nor the value to the township of the benefit received. And the commissioner of highways and the sureties on his official bond shall be jointly and severally liable to the township for the entire cost of litigation and damage to the township resulting from the illegal acts of such commissioner, including all reasonable fees and expenses of officers and counsel in connection with any suit or proceeding growing out of or in any way induced by such illegal acts, and the payment of such damages shall not relieve such commissioner from any criminal liability depending on his illegal acts; and any township officer violating any provisions of this section shall forfeit to the township in addition to the above mentioned liabilities, the sum of one hundred dollars for each offense.

Orders not to be drawn in excess of funds, etc.

Liability of township.

Liability of commissioner.

Forfeiture.

COMMISSIONER'S ORDERS: Manner of drawing orders.—*Monroe v. Rowland Twp.*, 1/318. The order is incomplete without a certificate that the labor is performed.—*Just v. Wise Twp.*, 42/573. The township clerk has no authority by virtue of his office to sign the names of highway commissioners to an order on a township treasurer.—*Id.* Highway commissioners can only act when authorized; there is no general presumption that they can bind their township by obligations which they may see fit to issue.—*Hosler v. Higgins Twp. Bd.*, 45/340. Payment of commissioner's orders may be compelled by mandamus.—*Just v. Wise Twp.*, 42/573; *McArthur v. Duncan Twp.*, 34/27; *Stoddard v. Glasson*, 120/91. See sections 262 and

263 relative to the payment of highway commissioner's orders and section 264 to prevent the issue of unauthorized orders. Other cases cited, see *Taymouth v. Koehler*, 35 / 22; *McKenzie v. Baraga Twp.*, 39 / 554; *High. Com'r's v. Van Dusan*, 40 / 429; *Avery v. Krakow Twp.*, 73 / 626.

This statute has always required that the order shall be accompanied by a certificate that the labor has been performed or the material furnished. Later, that part was incorporated making the township liable for contracts of the commissioner, within the scope of his authority, notwithstanding technical irregularities, etc., and also making commissioners and their bondsmen liable for illegal acts. But where the commissioners drew orders on the township treasurer, payable out of any moneys in the treasury belonging to the road district, these orders were not paid, and a mandamus was applied for to compel the township board to levy a tax on the township for their payment; there being nothing in the case to show that the township had had the benefit of the district fund, by misappropriation or otherwise, the mandamus was denied.—*People v. Zilwaukee Twp. Bd.*, 10 / 274.

(181) SEC. 5. The commissioner shall cause guide-posts, Guide-posts. with proper inscriptions and devices thereon, to be erected and kept in repair on all important road crossings on roads leading into cities and villages at distances from three to five miles out from such cities and villages, and at the intersection of all such roads in his township as he may deem necessary.

(182) SEC. 6. Once in every month from the first of April Removal of loose stones. to the first day of December the highway commissioner shall cause all the loose stones too large to bond with the roadbed, lying on the beaten track of every road within his township to be removed; no commissioner shall cause the roadbed of any Care of roads. highway to be plowed up, nor cause any clay, earth or other substance except gravel, crushed stone, iron ore, coal cinders, broken drain tile or sewer pipe to be placed upon the roadbed of any highway later than October first, nor shall the commissioner of highways cause any clay, earth or other substances, except gravel, crushed stone, iron ore or coal cinders to be placed upon a gravel or stone road at any time after such road has been permanently improved according to the provisions of this act. Any commissioner of highways or other person violating the provisions of this section relative to the plowing up of roadbeds, or the placing of clay, earth or other substance, except gravel, crushed stone, iron ore or coal cinders upon the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be punished by a fine of not less than twenty-five dollars and not exceeding one hundred dollars, or imprisonment in the county jail not less than thirty days or exceeding ninety days, or both such fine and imprisonment at the discretion of the court. Violations. Any commissioner who shall refuse or neglect to perform the duties required by this section shall be liable to a penalty of twenty-five dollars: Proviso. Provided, That the provisions of this section shall not prohibit or abridge the construction of new roads or the repairing roadbeds by highway commissioners at any time when the same may be washed out, nor shall the same in anywise prohibit the improvement or repairing of sand roadbeds at any time by commissioners of highways in such manner as they shall deem best: Proviso. Provided further, That the provisions

of this act shall not prohibit or abridge the construction of new roads or repairing of roadbeds by county road commissioners in such counties as have or shall hereafter adopt the county road system.

## CHAPTER XIII.

### MISCELLANEOUS PROVISIONS.

Township  
clerk, duty of.

(183) SECTION 1. The township clerk shall be the clerk of the commissioner of highways, and shall, under his direction, record his proceedings in a suitable book to be provided by the clerk for that purpose at the expense of the township, and shall keep an accurate account of all orders drawn by the commissioner on the township treasurer, stating the amount of each, and in whose favor the same were drawn; and all books and papers relating to the business of the commissioner shall be preserved and kept by the clerk in his office, and he shall record, in a book to be kept by him for that purpose, all papers filed in his office relating to laying out, altering or discontinuing of roads.

The clerk by virtue of his office has no authority to sign the commissioner's name to orders on the township treasurer.—Just v. Twp. of Wise, 42 / 573. Mandamus will lie to compel township clerk to countersign highway commissioner's orders.—Stoddard v. Glasson, 120 / 91.

Commissioner  
may administer  
oaths, examine  
witnesses, etc.

(184) SEC. 2. The commissioner shall have power to administer all oaths required in any proceeding before him, or in which he is called to act officially, and on application for laying out, altering, or discontinuing highways, and in proceedings to lay out private roads he may examine witnesses on oath as to any matter touching such application, and may issue subpoenas and compel the attendance of witnesses on the hearing thereof, but he shall charge no fees therefor.

Justices,  
sheriffs,  
constables,  
fees and  
duties of.

(185) SEC. 3. The just fees and charges of all justices of the peace, sheriffs, constables, and other officers who may render any service for or at the request of any commissioner of highways under the provisions of this act, shall be allowed by the township board and paid by the township, and it is hereby made the duty of such officers to render any service required of them under the provisions of this act, and when such service is required by a commissioner of highways, it shall not be necessary to pay or tender to such officers their fees for such service.

Per diem of  
commissioner.

(186) SEC. 4. The commissioner shall be entitled to the same per diem compensation for any services required of him by this act as is provided by law, which shall be audited and allowed by the township board and paid in the same manner as other township expenses.

See section 318.

(187) SEC. 5. The supervisor and commissioner of any township may negotiate and contract for the purchase of such portion of any plank road or toll road as may be situated within their township, and if such contract be ratified by the electors in like manner as is provided in section four of chapter eight of this act in case of voting money for bridge purposes, they may draw their orders on the township treasurer for the amount of the contract price, and the supervisor shall levy the amount upon the taxable property of the township in the same manner as township taxes are levied. When such purchase is made and completed such road shall become a public highway, and be subject to all the provisions of law the same as other township roads.

Contract and purchase of plank or toll road.

(188) SEC. 6. There shall also be elected at such meeting to be chosen viva voce, or in such manner as the meeting may direct, one overseer of highways for each road district, and no elector except a resident in the district where the overseer is chosen, or an elector of the township having taxable property in such district, shall vote for said overseer and as many poundmasters as the meeting may direct: Provided, If there shall be but one road district in a township the overseer of highways for that district shall be elected by ballot in the same manner as other township officers are elected. No person shall be eligible to the office of overseer of highways who is not a resident taxpayer in the district for which he is elected or appointed, and no person shall hold the office of commissioner and overseer at the same time.

Election of overseers and poundmasters.

Proviso.

Qualification of overseer.

(189) SEC. 7. All trees standing or lying on any land over which any highway shall be laid out, shall be for the proper use of the owner of such land or person otherwise entitled thereto, except such of them as may be requisite to make or repair the highways or bridges on the same land, or within one mile of the same; but no trees reserved for shade or ornament shall be used for such purposes.

Trees to be for use of owner.

The owner of the land through which a highway passes is the owner of the soil and the timber, except what is necessary to make bridges, or is otherwise required to make the road passable and may maintain trespass for digging into or removing the soil, grass or timber, except when needed for the use of the highway. The public have simply the right of passage over the highway.—Williams v. M. C. R. Co., 2 / 259.

See sections 111, 169, 173, 176 and notes.

(190) SEC. 8. In all cases in which a penalty is provided by this act for the fault, neglect or wrongful act of any person or corporation, and for the collection of which no other provision is made, the same shall be sued for in an action of trespass or on the case by the commissioner of highways of the proper township, in his official character, before any court of competent jurisdiction, and the amount when collected shall be paid to the township treasurer, and credited to the highway improvement fund of the township.

Collection of penalties, not provided for.

Ramsby v. Bigler, 129 / 570.

Execution of judgments.	(191) SEC. 9. In case of any judgment rendered under and by virtue of section three of chapter seven, sections eight and nine of chapter eight, or sections four, five, six, seven, eight or nine of chapter ten, of this act, execution may run against the body as in personal actions for torts.
Words construed.	(192) SEC. 10. The word "commissioner," wherever used in this act, except some special commissioner be mentioned, shall be construed to mean the commissioner of highways elected in and for each township, and wherever the word "overseer" is used it shall be construed to mean the overseer of highways elected or appointed over and for each road district, and no exception shall be taken to the language of this act if in any place it fail to set forth specifically the intent and meaning herein defined.
Care of tools by overseer.	(193) SEC. 11. Each overseer of highways shall be personally responsible for the proper use and care of such tools and machines while in his charge, or in use in his road district, and any overseer or other person who shall through negligence or otherwise wilfully injure or damage such tool or machine shall be liable for such damage in an action of trespass on the case to be brought by said commissioner before any justice of the peace in said township or any adjoining townships.
Storage and housing of tools.	(194) SEC. 12. It shall be the duty of the commissioner of highways of each township to provide a suitable place for the storage and proper housing of all tools, implements and machinery that are owned by the township, and to cause such tools and implements to be stored and housed therein at all times when not in use.
Breaking into storage or removal of tools.	(195) SEC. 13. Any person who shall break into any such place of storage as above provided, or remove or take away without the consent of the commissioner of highways, or the consent of the overseer of highways or injure any such tools of [or] machinery, shall be deemed guilty of a misdemeanor, and may be punished therefor by a fine not exceeding one hundred dollars or by imprisonment for not more than ninety days, or both such fine and imprisonment, in the discretion of the court.
Ferry landings.	(196) SEC. 14. Ferry landings shall be deemed public highways, and may be laid out, constructed, maintained, altered, or discontinued in the same manner, and shall in all respects be subject to the same regulations, so far as they may be applicable, as other public highways and bridges; and any public highways along the border of, or terminating upon the waters of any stream, river, or other body of water across which a ferry is licensed, may be used as a landing for such ferry, subject to such rules and regulations as the authorities having control over highways may establish and such use shall be deemed a proper use thereof as a highway.
Purchase of land for gravel.	(197) SEC. 15. The commissioner of highways shall have power to purchase land suitable for obtaining gravel for the

use of the highways of his township. If he be able to agree with the owner thereof, he may purchase the same and pay therefor out of the general highway fund of the township, upon the approval of the township board. Whenever said highway commissioner shall be unable to agree with any owner of any parcel of such land which the said commissioner desires to purchase for graveling purposes, as to compensation to be paid therefor, the highway commissioner shall give notice in writing to the owner or occupant of the land, on which may be located such gravel desired for the use of the improvement of the highways of the township of his intention to condemn such land for such purposes, and all subsequent proceedings for the condemnation of such lands shall be in accordance with the provisions of chapter nine of this act in relation to the opening of private roads, insofar as the same is applicable.

## CHAPTER XIV.

### HIGHWAY TAXES AND THE ASSESSMENT THEREOF.

(198) SECTION 1. It shall be the duty of the township clerk of each township, on or before the first day of October of each year, to make and deliver to the supervisor of his township, a certified copy of all statements and certificates on file, and of all records of any vote or resolution in his office authorizing or directing moneys to be raised therein by taxation for township, school, highway, drain, and all other purposes, together with a statement of the aggregate amount thereof, and such certified copies shall, by such supervisor be delivered to the clerk of the county on or before the second Monday of said month, and the same shall by said clerk be laid before the board of supervisors at its annual meeting and filed in his office.

Statement of  
moneys to be  
raised.

**CLERK'S CERTIFICATE:** If the township tax was authorized by competent authority in the first instance, the want of a certificate by the township clerk will not invalidate a tax duly directed to be raised by the board.—Aud. Gen. v. McArthur, 87/462. The failure of the township clerk to aggregate, in his certificate, the several township taxes to be raised in his township is unimportant, if the several amounts are stated.—Boyce v. Aud. Gen., 90/322.

**TOWNSHIP BOARD:** As to the authority and action of the township board in raising money by taxation, see section 36 and notes.

(199) SEC. 2. The board of supervisors, at their annual session in October in each year, shall ascertain and determine the amount of money to be raised for county purposes, and shall apportion such amount, and also the amount of the State tax and indebtedness of the county to the State among the several townships in the county in proportion to the valuation of the taxable property therein, real and personal, as determined by them for that year which determination and apportionment shall be entered at large on their records.

Board of supervisors, duty of, relative to raising of money and apportionment.

They shall also examine all certificates, statements, papers and records submitted to them, showing the moneys to be raised in the several townships for school, highway, drain, township and other purposes. They shall hear and duly consider all objections made to raising any such moneys by any tax payer to be affected thereby. If it shall appear to the board that any certificate, statement, paper or record is not properly certified, or that the same is in anywise defective, or that any proceeding to authorize the raising of any such moneys has not been had, or is in anywise imperfect, and such certificate, statement, paper, record or proceeding can then be corrected, supplied or had, such board may authorize and require such defects or omissions or proceedings to be corrected, supplied or had. They may refer any or all such certificates, statements, papers, records, and proceedings to the prosecuting attorney, whose duty it shall be to examine the same and, without delay, report in writing his opinion to the board. They shall direct that such of the several amounts of money proposed to be raised for township, school, highway, drain and all other purposes, as shall be authorized by law, be spread upon the assessment roll of the proper townships, wards and cities. Such action and direction shall be entered in full upon the records of the proceedings of the board, and shall be deemed final as to the levy and assessment of all such taxes.

**MANDATORY:** The corresponding provisions of the tax law of 1869, requiring the board to ascertain and determine the county tax and then to apportion the same and the State tax among the townships, etc., were held to be mandatory.—*Boyce v. Sebring*, 66/213. Mandamus lies to compel the board to direct the levy of such taxes as are shown by legal township statements.—*Robbins v. Barron*, 33/126. The board must determine whether or not the taxes on the roll appear to be authorized by law and, if they are so authorized, they should be assessed and collected; if not, the improper items should be rejected.—*Zink v. Supervisors*, 68/283.

**APPORTIONMENT:** The apportionment consists in ascertaining by a mathematical computation what part of the State and of the county tax each township shall raise. The law lays down the ratio and says that the apportionment shall be in proportion as the total equalized valuation of the taxable property in the county is to the equalized valuation of the taxable property in the township, so is the whole amount to be raised to the amount to be raised in each township.—*Boyce v. Sebring*, 66/215. To authorize the supervisor to assess or impose State and county taxes their amount for the township must have been apportioned by the board of supervisors and certified to him by their clerk.—*Clark v. Axford*, 5/188. It seems that the board cannot delegate the authority to make the apportionment to their clerk.—*Scofield v. Lansing*, 17/437. The apportionment may be made by a certain percentage on the assessed valuation.—*Hubbard v. Winsor*, 15/146. Where competent evidence does not show the apportionment, there is no basis for an estimate as to whether a tax is or is not excessive.—*Yelverton v. Steele*, 36/62. Apportionment may be enforced by mandamus.—*Aud. Gen. v. Supervisors*, 24/237; *Att'y Gen. v. Supervisors*, 30/388. This section contemplates a computation of personal assessments in October, and that the apportionment shall be made on the basis of the aggregate real and personal assessment as determined by the board. This determination was made in October, but the board, in making up its figures, used the assessments of personal property as they appeared on the original rolls, which was a mistake in the performance of a ministerial duty.—*Aud. Gen. v. Griffin*, 140/430. The board is not bound by the figures of the State tax commission in making its equalization.—*Id.*

**COUNTY TAX:** As to the power of the board to raise money, see section 224 and notes. The authority to tax is fixed by the statute and must be strictly pursued.—*Case v. Dean*, 16/32. Any material excess renders the tax void and if lands are sold for such tax, the deed will be void.—*Id.*; *Hall v. Kellogg*, 16/135; *Edwards v. Tallafiero*, 34/13; *Att'y Gen. v. Bay Supervisors*, 34/46; *Wattles v. Lapeer*, 40/624; *Connors v. Detroit*, 41/128; *Slisbee v. Stockle*, 44/561; *Hammontree v. Lott*, 40/190; *Burroughs v.*

*Goff*, 64/468-9; *Boyce v. Sebring*, 66/219. The allowance of illegal demands by the board of supervisors will not invalidate a tax, unless the amount raised to pay them is incorporated with it.—*Wright v. Dunham*, 13/414. When the county tax will not be defeated.—*Silsbee v. Stockle*, 44/561. Where the board, instead of fixing a specific sum to be raised as a county tax, directed a percentage on the assessed value, it was held legal. The designation of a percentage on a definite sum is just as certain, as if it were calculated and stated in figures, and leaves nothing to be done to make it known, except a simple calculation.—*Hubbard v. Winsor*, 15/153.

**TOWNSHIP TAX:** The board of supervisors does not originate township or school taxes, but they take the certificate of the township clerk of the several amounts which the proper authorities have voted for those purposes and direct the amounts specified, if they appear to be authorized by law, to be spread upon the tax roll of the townships. The board has no discretion in the premises, and the action of the supervisors is not required to give the local officers power in the premises, but rather to insure the duty being surely and regularly performed.—*Robbins v. Barron*, 33/126. Hence the supervisor may levy township, school and highway taxes without order of the supervisors, if legally authorized by the proper authority.—*Id.*; *Upton v. Kennedy*, 36/220; *Hunt v. Chapin*, 42/24; *Boyce v. Sebring*, 66/218; *Aud. Gen. v. McArthur*, 87/462-3. And the board cannot certify the taxes to be raised in any township without the certificate of the township clerk.—*Aud. Gen. v. McArthur*, 87/462. Drain taxes appear to stand upon a different footing from other taxes, and cannot be spread by the supervisors without the direction of the board.—*Post v. Harris*, 95/324. A township tax not authorized by the electors or the township board is void.—*Lacey v. Davis*, 4/157. Where the township records fail to show that any sum was voted by the electors or town board, the levy of a tax therefor is illegal, no presumption arising that such vote was had or taken.—*Williams v. Mears*, 61/86. Authority to levy must appear of record.—*Id.* 89; *Mich. Land etc., Co. v. LAnse*, 63/702; *Burroughs v. Goff*, 64/464; *Boyce v. Sebring*, 66/210. Every essential proceeding in the levy of taxes must appear of record.—*Aud. Gen. v. McArthur*, 87/462. When a township tax exceeding the amount voted by the township board may be sustained.—*Silsbee v. Stockle*, 44/561.

**REVIEW:** When any certificate, paper, or record submitted to it is not properly certified, the board of supervisors may authorize and require such defect or omission to be corrected.—*Aud. Gen. v. Ayer*, 122/136. When board of supervisors cannot review proceedings of drain commissioner in establishing a drain, and refuse to order the spreading of the assessments for the drain.—*Horn v. Board of Sup's*, 135/553.

**DEFECTIVE PROCEEDINGS:** Where proceedings of drain commissioner are defective in matters that do not occur until more than ten days after his final determination, the board of supervisors may refuse to spread the tax.—*Kenyon v. Supervisors of Ionia Co.*, 138/544. See also *Joliet Bridge & Iron Co. v. Freeman*, 149/275.

(200) **SEC. 3.** The clerk of the board of supervisors shall, immediately after the said apportionment, make out two certificates showing the amounts apportioned to each township for State, county and the various township purposes, each tax being kept distinct, one of which he shall deliver to the county treasurer, and the other to the supervisor of the proper township: Provided, That if said clerk fail to make such certificate, the supervisor shall take official notice of all certificates, statements, papers and records in the office of the township and county clerk relating to the levy of taxes in his township, and of the action of the board of supervisors thereon.

County clerk to issue certificates of apportionment.

Proviso.

The certificate of the county clerk is the authority for the supervisor to assess the state and county taxes.—*Clark v. Axford*, 5/188. See *Boyce v. Sebring*, 66/222.

(201) **SEC. 4.** The supervisor of each township or ward, and the assessing officer of each city or village, as provided by law, shall proceed to assess the taxes apportioned to his township, or assessment district, according and in proportion to the valuation entered by the board of review in the assessment roll of the township, ward, village or city of the year:

Assessment of taxes.



Provido. Excess of roll. Entry of separate taxes.

Provided, That if the board of review make no such entry, then on the valuation therein as entered by the supervisor or assessor. For the purpose of avoiding fractions in computation, the assessor may add to the amount of the several taxes to be raised not more than one per centum; said excess shall belong to the contingent fund of the township; such taxes shall be entered in separate columns, as follows: All school taxes and the one mill tax in one column, road repair tax in another, highway improvement tax in another, township taxes in another, county taxes in another, and the State taxes in another column; and if other taxes are at any time required to be raised, they shall be placed in separate columns. The total of all the taxes assessed against any one valuation or parcel of property shall be added and carried out in the last column upon the right hand side of such roll.

**ASSESSING TAXES:** To give the supervisor jurisdiction, he must receive the equalized assessment roll duly certified; the State and county taxes must be apportioned and certified to him by the clerk of the board of supervisors; the township taxes must be certified by the township clerk and the school district taxes by the district board.—*Clark v. Axford*, 5/188. See *U. School Dist. v. Parris*, 97/596; *Hamilton & Merryman Co. v. L'Anse Twp.*, 107/419. As to assessment of highway taxes.—*Mich. Land Co. v. L'Anse*, 63/700. The policy of the law is that parties shall pay legal taxes even though there may be some irregularity in demanding them and that they shall complain to the courts of those errors only which may injure them.—*Stockle v. Silsbee*, 41/615. The mere fact that some of the property upon an assessment roll was undervalued, or that taxable property was omitted, is insufficient to invalidate an assessment, unless it be made to appear that such action on the part of the assessing officers was intentional.—*City of Muskegon v. Boyce*, 123/535.

**SEPARATE COLUMNS:** This provision is mandatory. It was intended for the benefit of the taxpayer, to enable him to distinguish the different species of taxes he should be called upon to pay and their respective amounts.—*Case v. Dean*, 16/31; *Tillotson v. Webber*, 96/155. A township tax levy for highway purposes is properly included with the regular highway tax, and need not be placed in the column for township taxes.—*Silsbee v. Stockle*, 44/561; *Tillotson v. Webber*, 96/155.

Taxes assessed, a debt to township and lien upon property.

(202) SEC. 5. The taxes thus assessed shall become at once a debt to the township, ward or city from the persons to whom they are assessed, and the amounts assessed on any interest in real property, shall on the first day in December, become a lien upon such real property, and the lien for such amounts, and for all interests and charges thereon, shall continue until payment thereof. And all personal taxes shall also be a lien on all personal property of such persons so assessed from and after the first day of December in each year, and shall take precedence of any sale, assignment or chattel mortgage, levy or other lien, on such personal property, executed or made after said first day of December, except where such property is actually sold in the regular course of trade.

Personal.

**DEBT DUE:** When the law prescribes who shall be liable for the payment of taxes, and whose property may be levied upon therefor, it at the same time by implication forbids the officer to seize upon the property of others, or by act or omission to make the tax a charge upon such property.—*Raynsford v. Phelps*, 43/345 G. The taxes are a debt which it is the duty of the person assessed to pay.—*W. Mich. Lumb. Co. v. Dean*, 73/462; *Muskegon v. S. K. Martin Lumb. Co.*, 86/629. The liability of the party assessed to pay the tax becomes fixed when the tax is extended upon the original assessment roll.—*W. Mich. Lumb. Co. v. Dean*, 73/462.

**LIEN:** Lands in this State have always been subject to a lien for the taxes levied thereon. The only object in fixing a day when the tax becomes a lien was to settle the question, as between successive owners of the land,

which of them ought to pay the tax.—Harrington v. Hilliard, 27 / 278. Suits to recover taxes.—St. Joseph City v. Vail, 137 / 276.

(203) SEC. 6. Before the supervisor or assessing officer shall deliver such roll to the township treasurer or city collector he shall carefully foot the several columns of valuation and taxes, and make a detailed statement thereof, which he shall give the clerk of his township or city, and said clerk shall immediately charge the amount of taxes to the township treasurer or city collector. The clerk of each city and incorporated village shall report to the clerk of their respective counties all taxes levied in their respective cities or villages, and not included in the general tax levy, on or before the first day of October in each year. The county clerk shall, within thirty days after the close of the annual session of the board of supervisors in October in each year, forward to the auditor general, to be filed in his office, a statement showing the aggregate valuation of all property as assessed in each assessing precinct within the county during the current year. He shall include in such statement a detail of all taxes to be raised in the county for such year; also the amount of taxes not included in the general tax levy, reported to him by the several city and village clerks as above provided.

Footing of assessment roll.

Report of special tax.

County clerk to forward statement of valuations, etc.

(204) SEC. 7. In case the township treasurer shall not collect the full amount of taxes required by his warrant to be paid into the township treasury, such portion thereof as he shall collect shall be retained by him to be paid out for the following purposes: The amount of school taxes collected to be paid on the order of the school district officers; the amount collected for general township purposes to be paid on the order of the township board; the amount collected for highway purposes to be paid on the order of the highway commissioner, countersigned by the township clerk, and the amount collected for any special fund to be paid on the order of the proper officer, but in no case shall the amount collected for any one fund be paid on the orders drawn on any other fund.

Taxes, purposes, etc.

Am. 1911, Act 148.  
Muskegon City v. County, 123 / 274.

#### TOWNSHIP ROAD BONDS.

(205) SEC. 8. The township board of any organized township in the State of Michigan is hereby authorized and empowered, upon an application being first filed with such township board, signed by at least twenty-five freeholders of such township, to borrow a sum of money, not exceeding five per centum of the assessed valuation of such township, on the faith and credit of such township, and to issue the bonds of such township therefor, the money so borrowed to be used for the purpose of graveling, macadamizing, building stone roads, building or repairing bridges, or in any other way in the discretion of the township board providing for the better

Township board may issue bonds for roads.

Proviso.	construction, improvement and care of the highways in such township: Provided, That a majority of the legal voters of such township, voting upon said proposition, at a township meeting, a general election or a special election called by the township board for that purpose, shall vote in favor thereof.
Commissioner to supervise improvements.	(206) SEC. 9. The commissioner of highways shall have charge and supervision, under the direction of the township board, of such graveling, macadamizing, building of stone roads, building or repairing of bridges, or any other improvements of the highways of such township, as may be authorized under the provisions of this act, and all moneys paid out therefor shall be paid on the order of the commissioner of highways, countersigned by the township clerk. Said commissioner of highways shall render to the township board at the annual meeting thereof in each year an account in writing, showing the extent of the improvements that have been made on the highways of the township, the roads that have been constructed, or partially constructed, the number and cost of bridges built or repaired, and the amount of money that has been expended for the respective purposes:
Moneys, how paid out.	Provided, That where any township has adopted the township road system, as provided by act number one hundred forty-nine of the public acts of eighteen hundred ninety-three, entitled "An act to provide for a county and township system of roads and to prescribe the powers and duties of the officers having the charge thereof," and acts amendatory thereof, the road commissioners of such townships shall have charge and supervision, as provided in said act number one hundred forty-nine of the public acts of eighteen hundred ninety-three, as aforesaid, and amendatory acts; all moneys paid out for the improvement of highways and bridges shall be paid out on the order of said township road commissioners, countersigned by the township clerk.
Report of commissioner.	(207) SEC. 10. The question of issuing the bonds provided for in section eight of this chapter shall be submitted to the legal voters of such township by the township board within ninety days after the filing of the application mentioned in section eight, giving due notice thereof by causing the date, place of voting and object of said election to be stated in written or printed notices to be posted in five public places in such township at least twenty days before the time fixed by said board for such election and by publishing the same in at least one newspaper published in said township, or if none be published in said township, then in some newspaper published in the same county, which is circulated in such township, at least two weeks before the time of such election, which notice shall state the amount of money proposed to be raised by such bonding and the purpose or purposes to which it shall be applied.
Proviso.	(208) SEC. 11. The vote upon such proposition shall be by ballot, either printed or written, or partly printed and
Notice of question of bond issue.	
Form of ballot.	

partly written, and such ballots shall be in the following form:

For the issuing of township bonds to improve the highways  
—Yes.

For the issuing of township bonds to improve the highways  
—No.

The election shall be conducted and the votes canvassed in all respects as in other township elections.

(209) SEC. 12. If at such election a majority of such qualified electors present thereat and voting upon said proposition shall vote in favor of such loan, said bonds shall be issued by the township board in denominations not exceeding one thousand dollars each, at a rate of interest not exceeding five per centum per annum and for a period not exceeding twenty-five years, as the township board shall by resolution direct. Said bonds shall be signed by the township board, countersigned by the township treasurer and negotiated by and under the direction of said board, and the moneys arising therefrom shall be used for the purpose or purposes which have been set forth in the notices of election and the ballots cast at such election, and for no other purpose.

Denomina-  
tion and nego-  
tiation of  
bonds.

(210) SEC. 13. In case any bonds are issued under the provisions of this act it shall be the duty of the township board to raise in each year by tax upon the taxable property of such township such sums of money as shall be sufficient to pay the amount of said bonds and the interest thereon as fast as the same shall become due.

Tax for pay-  
ment of bonds.

(211) SEC. 14. No bonds issued under and by virtue of this act shall be used or negotiated at less than their par value.

Bonds to be  
sold at par.

(212) SEC. 15. All counties or parts of counties in the State, which have adopted the county road system, may issue bonds for the payment of the improvement of such highways as the commissioners of highways decide to make: Provided, Such issue is approved by a vote of the electors of such county or district: Provided further, That such bonds are not issued in excess of three per centum of the valuation of the property assessable for the said highway improvement.

Bonds in coun-  
ties adopting  
county  
system.

Proviso.

(213) SEC. 16. Such bonds shall not run for longer than twenty years, nor be sold for less than par, and it is further provided that the funds arising from the sale of such bonds shall be applied solely to the building of improved highways under the control of the road commissioners for the county or road district.

Term and ap-  
plication of  
proceeds.

(214) SEC. 17. It is further hereby provided that the board of supervisors in the county may order an election on the question of issuing such bonds in the county, or road district on petition of twenty-five freeholders, residing in the territory affected, and such election may be held under the provisions of the general election laws.

Order for  
election.

General or  
special  
election.

(215) SEC. 18. It is further provided that, if a general election be held within six months of the filing of such a petition as is referred to above, the question of issuance of such bonds shall be submitted at such election, but if not, a special election for this question may be called by the board of supervisors.

## CHAPTER XV.

### DRAINS.

Drainage of  
highways;  
release of right  
of way.

(216) SECTION 1. Drains may be laid along and within the limits of or across any public highway: Provided, That when it is proposed to construct a drain in whole or in part along a public highway, the owners of the land abutting on the side of the highway along which such drain is proposed to be laid, shall be considered as still owning the fee of such land, and it shall be necessary for the county drain commissioner to obtain from them severally a release of their rights to so much of said highway as is necessary and proposed to be taken for the right of way of said drain, and for all damages on account thereof. In case such release is not executed within the time (a) prescribed in section four of chapter three, such release (b) shall be obtained in the same manner as is provided in this act for obtaining private lands.

Highway officers have no more right than private persons to cut drains which will flood the lands of private owners.—*Cubit v. O'Dett*, 51/347. It has been the settled policy of this State to permit the use of highways for drainage purposes.—*Kiley v. Bond*, 114/447. See sections 220-223 relative to the better drainage of highways.

(a) Within twenty days after the commissioner has issued his order of determination establishing the drain.

(b) A simple form of release of right of way and damages, that shall set forth, by reference to the survey of the drain, or by other convenient description, the particular land interested to be conveyed, and signed and acknowledged by the person having the right to convey, shall be deemed a sufficient conveyance. A release for right of way shall be deemed to include sufficient ground on either side of the center line of the ditch for the deposit of the dirt therefrom.

Charge for  
bridges or  
culverts.

(217) SEC. 2. When any drain crosses a highway, the cost of constructing the necessary bridge or culvert shall be charged in the first instance as part of the cost of construction of such drain, after which such bridge or culvert shall be maintained as part of the highway, and such bridge or culvert shall be of material that will render it permanent, and shall be built of sufficient strength to safely carry a ten ton load. When a drain passes along a highway, there shall be constructed at least one bridge or passageway across such drain connecting the highway with each enclosed field and with each farm entrance, which bridge or passageway shall also be charged in the first instance as a part of the construction of such drain, after which such bridge or passageway shall be maintained by the owner of the land.

(218) SEC. 3. Before any drain shall be laid along a public highway, the highway commissioner of the township in which the drain is located shall be consulted and his consent as to the proposed location of the drain shall be obtained in writing, which consent shall stipulate how close to the center line of the highway any excavation required in the construction of such drain may be made.

Consent of  
highway com-  
missioner.

(219) SEC. 4. The county drain commissioner shall apportion the percentum of the cost of construction of such drain which any township traversed or benefited thereby shall be liable to pay by reason of the benefit to the public health, convenience or welfare, or as the means of improving any highway, and he shall also apportion the per centum of benefits to accrue to any piece or parcel of land by reason of the construction of such drain, over and above the per centum assessed against such township as aforesaid, which per centum of benefits shall be apportioned upon and assessed against the lands benefited according to such assessment of benefits and which apportionments he shall announce at the time and place of letting, as provided in chapter four. Such assessment of per centum for benefits shall thereupon be subject to review and correction, and may be appealed from in the manner hereinafter provided.

Drain com-  
missioner to  
apportion  
costs.

See Section 1, Chap. V, Act 185 of 1911.

(220) SEC. 5. Whenever it is necessary or more convenient for the proper drainage of any highway in this State that the surplus water be taken onto or across the land adjacent thereto, the highway commissioner of the township in which said highway is situated, may secure the right of way and may open such drain or outlet for the water, and for these purposes may use any highway moneys of the township not otherwise appropriated, and such sums as may be voted for that use by the electors of the township. The highway commissioner shall secure the right of way for any such drain by gift or purchase from the owners of the land to be crossed by such drain; but in case of purchase the purchase price must be approved by the township board before any money be paid thereon. Such right of way shall be acquired by deed duly executed by the owner or owners of the lands sought to be crossed by the said drain, and shall be taken in the name of the township wherein the same is located, and filed in the office of the register of deeds of the county before any highway money shall be expended in opening such drain outside the highway limits.

Right of way  
across adja-  
cent lands.

Highway authorities have no right to cut drains the necessary result of which will be to flood the lands of individuals, even if the drain is no larger or deeper than necessary to properly construct the road.—Breen v. Hyde, 130/1.

(221) SEC. 6. The highway commissioner shall report to the electors of the township at their annual meeting the

Report of  
commissioner  
to electors.

amount of money expended by him during the year for such highway drainage, specifying the amount expended on each drain. He shall also recommend the raising of such sums as he may deem necessary for opening drains from the highway during the coming year, specifying each proposed drain and the probable amount needed for securing the right of way and opening the same. The money voted for this purpose by the electors of the township shall constitute a special highway drain fund, and shall be used for no other purpose. In case any money be left in the fund, after opening the drain for which it was raised, it may be used in opening any other highway drain in the township, or in cleaning out, when necessary, those already opened.

Drain fund.

Report to  
drain com-  
missioner.

(222) SEC. 7. On the completion by the highway commissioner of any drain constructed under the provisions of this act, it shall be the duty of said highway commissioner to file in the office of the county drain commissioner a detailed report of the construction of such drain, giving the date of construction, the termini and general course thereof, together with a copy of the deed by which the right of way therefor was secured. Nothing in the provisions of the preceding sections shall be construed as giving to highway commissioners power to lay out and construct drains having any other purpose than the drainage of highways.

Proceedings,  
when right of  
way cannot  
be secured.

(223) SEC. 8. In case the highway commissioner cannot secure the right of way across adjacent lands for the construction of any drain by agreement with the owner or owners of the land through which it will pass, he may make under his name of office an application to the drain commissioner of the county in which the proposed drain is situated, to lay out and establish the said drain. Such application shall conform to the law regulating applications for the construction of drains, and shall require no other signature than his own as highway commissioner. Such application shall have the same force and effect and be subject in other respects to the same laws and regulations that govern other applications for the establishment of drains, and shall confer jurisdiction and authority on the county drain commissioner to lay out and establish such drain under and by virtue and in pursuance of the law governing the location and establishment of other drains.

## CHAPTER XVI.

## POWERS AND DUTIES OF BOARDS OF SUPERVISORS.

(324) SECTION 1. The said several boards of supervisors Relative to taxation, loans, etc. shall have power, and they are hereby authorized, at any meeting thereof, lawfully held:

To borrow or raise by tax upon such county any sums of money necessary for any of the purposes mentioned in this act: Provided, That no greater sum than one thousand dollars shall be borrowed or raised by tax in any one year, for the purpose of constructing or repairing public buildings, highways, or bridges, unless authorized by a majority of the electors of such county voting therefor as hereinafter provided;

To provide for the payment of any loan made by them, by tax upon such county, which shall in all cases be within fifteen years from the date of such loan;

To make such laws and regulations as they may deem necessary, and provide for enforcing the same, for the destruction of wild beasts, of thistles and other noxious weeds within the several counties;

To authorize any township or townships in their respective counties, by a vote of the electors of said township or townships, to borrow or raise by tax upon such township, any sum of money not exceeding ten thousand dollars in any township in any one year, to build or repair any roads or bridges in such township or townships, or in the use of which such township or townships may be interested, and to prescribe the time for the payment of any such loan, which shall be within fifteen years, and for assessing the principal and interest thereof upon such township or townships; and if any road or bridge is situated partly in one township and partly in another, or on the line between townships, or in case any township has any particular local interest in the construction or repair of any bridge, such board of supervisors may determine, under such regulations as they may establish, the relative proportion which each township shall contribute in the building and repairing thereof, and the amount so apportioned to the several townships shall be assessed and collected in the same manner as other township taxes are now assessed and collected by law.

See sections 324-328.

See section 2485, C. L., 1897, which requires that none of the powers mentioned in the fifteenth subdivision (which is similar to the last preceding paragraph) shall be exercised without a vote of two-thirds of all the members elected to such board.

The law allows the board to raise money only for necessary uses. Any money which they raise must be for some of the purposes mentioned in the statute. Money cannot be raised by the board to be paid over to the township without any definition of purposes, and to be spent under the direction of township officers.—Att'y Gen. v. Supervisors, 34/46. A board of supervisors cannot raise more than \$1,000 annually for building purposes without a vote of the electors.—Callam v. Saginaw, 50/7; Pack v. Supervisors, 36/379;



McMullen v. Judge, 102/610; Supervisors v. Simmons, 104/306. A board of supervisors has no power under this and (subd. 10, sec. 2484, C. L., 1897) to borrow money to meet the current expenses of the county, but the same must be raised by taxation.—Supervisors v. Warren, 98/145; McCurdy v. Shlawassee Co., 154/550. The board has no power to raise, as a part of the county tax, money to be expended generally upon the highways in a township.—Sage v. Aud. Gen., 72/638; McMullen v. Judge, 102/610. The limit of fifteen years applies to bonds issued under the county road system, section 81.—Supervisors v. Simmons, 104/305; Stockle v. Silsbee, 41/621; Hecock v. Van Dusen, 80/365; Mfg. Co. v. Echlinaw, 81/420; Tillotson v. Webber, 96/154; Twp. of Harrison v. Supervisors, 117/216. Promissory notes given by the treasurer of a county, pursuant to a resolution of the board of supervisors assuming to authorize him to borrow money for current expenses, are authorized by law, and no recovery can be had against the county upon them.—McCurdy v. Shlawassee Co., 154/550.

To bridge,  
dam or clear  
navigable  
streams.

(225) SEC. 2. Every such board of supervisors shall have power, within their respective counties, to permit or prohibit the construction of any dam or bridge over or across any navigable stream. They shall also have power to provide for the removal of any obstruction arising from the erection of booms, or collecting of logs or rafts in such streams by any individual, and to direct the time in which, and places where, persons having logs, rafts, and boats in such streams shall be allowed to remain, and when the same shall be removed; and may impose such penalties as they deem necessary to enforce such regulations, and authorize the sheriffs or their deputies, to carry into effect the regulations made under the provisions of this act.

NAVIGABLE STREAMS: A stream which in its natural condition is capable of being used for important purposes of navigation, as the floating of vessels, boats, rafts or logs, must be regarded as a public highway.—Moore v. Sanborne, 2/520; Thunder Bay River Booming Co. v. Speechy, 31/336. And if the stream is only navigable at certain seasons of the year, during periodical high stages of the water it is to be considered a public highway at those seasons.—Id. Stoffet v. Estes, 104/208. A river so far as it is navigable for vessels or floatable for logs is but a public highway by water, and the right to navigate the one or float the other is but a right of passage, including only such rights as are incident to the use of the stream for that purpose, and necessary to render such use reasonably available.—Grand Rapids Booming Co. v. Jarvis, 30/309. A stream is navigable when it is inherently capable of being used for the purposes of commerce, for the floating of vessels, boats, rafts or logs.—People v. Grand Rapids, etc., Power Co., 164/121.

BRIDGES AND DAMS: The authority conferred by this statute upon the board of supervisors is a trust that must be executed by themselves, they cannot delegate it to others, especially to parties concerned in any details requiring the exercise of their judgment, such as the location or character of the bridge.—Maxwell v. Bay City Bridge Co., 41/454. Boards of supervisors have jurisdiction to act upon petitions for leave to bridge navigable streams only when the petitions answer the requirements of the two succeeding sections.—Id. As to the right to dam a private stream. See Fox v. Holcomb, 34/299; Valentine v. Water Power Co., 128/280. No one can lawfully complain of the obstruction of water courses by damming or bridging, as has been permitted in conformity to law, by the consent of the proper authorities.—Wood v. Rice, 24/423. The constitutional requirement that leave must be obtained from the board of supervisors before any navigable stream can be bridged does not apply to streams which, in their natural condition, are not adapted to any valuable boat or vessel navigation.—Shepard v. Gates, 50/495.

The authority of the boards of supervisors in bridging, etc., does not extend to streams forming any part of the State boundary; but only to those which at the place of bridging, etc., are wholly within the State.—Ryan v. Brown, 18/196. For an act authorizing boards of supervisors to build and maintain bridges across a navigable river, conjointly with an adjoining county of another state, see sections 233 and 234. By certain constitutional and other provisions, the right of navigation in streams was intended to be protected; and the power given by the statute to supervisors of the several counties, relating to the privilege of damming streams by private parties, is thereby limited to the intended purpose.—People v. Grand Rapids, etc., Power Co., 164/121.

OBSTRUCTIONS: This does not contemplate that the board shall engage in removing obstacles to free navigation that have existed for half a century,

but refers to removing obstructions concurrently created.—*Galner v. Nelson*, 147 / 113.

**Note.**—By act of congress approved September 19, 1890, it is declared that it shall not be lawful to construct, by virtue of legislative acts of the State, any bridge not already authorized by law over navigable waters of the United States wholly within the limits of said state, without the approval of the secretary of war of the location and plans of such bridge. Under the statute, the boards of supervisors are given merely power to grant or refuse the petition of private parties, to dam navigable streams; and may not impose limitations on the right of the petitioner, except by limiting the time in which the work may be done.—*People v. Grand Rapids, etc., Power Co.*, 164 / 121.

(226) SEC. 3. Whenever any person or persons, township officers, or corporation, shall wish to construct any bridge across any stream at a point where the same is navigable for boats or vessels of fifteen tons burden or more, they shall apply to the board of supervisors by petition, and shall give notice of the same, in like manner, as near as may be, as provided in section twenty-two of act number one hundred fifty-six of the public acts of eighteen hundred fifty-three; and the powers, and the mode of proceeding of such board, shall be the same, as near as may be, as provided in the last named section. Every such petition shall set forth the kind and description of the bridge proposed to be constructed, and whether the same is to be constructed with a draw, or whether any and what provision is to be made for the passage of vessels or boats; and such board shall have the power to grant or refuse the prayer of such petition, upon such terms as they may deem just and reasonable, and to prescribe what description of bridge may be constructed, or to prohibit the construction of any bridge on the proposed location, as in their judgment the public interest shall require.

Petition for  
bridge across  
navigable  
streams.

**PETITION:** A petition for leave to bridge a navigable stream must specify the proposed location of the bridge with reasonable precision; this may depend largely upon the extent of the commercial interests that may be involved in the location and the convenience of the public; greater particularity would be needed if the bridge is to be built where there is a town than where there is not. The petition must also describe the bridge with particularity, as by indicating the location of the draws.—*Maxwell v. Bay City Bridge Co.*, 41 / 453; *Corning v. Saginaw City*, 116 / 77.

**RIGHT TO BRIDGE:** The constitutional requirement that leave must be obtained from the board of supervisors before any navigable stream can be bridged does not apply to streams which in their natural condition are not adapted to any valuable boat or vessel navigation.—*Shenard v. Gates*, 50 / 495. The duty of maintaining a drawbridge over navigable waters, includes the obligation to properly provide for the safe passage of vessels through the draw.—*Twp. Bd. of Ecorse v. Supervisors*, 75 / 264. Where a stream, navigable at certain seasons of the year for floatage, was made navigable for a boat of fifteen tons burden by the construction of a dam by a private individual, and was so used for fifteen years, the township authorities having constructed bridges to admit of the passage of the boat, were enjoined from afterwards rebuilding the bridges in such a way as to obstruct its passage. First, For invading private rights without condemnation proceedings and compensation. Second, The stream being navigable, permission to bridge must first be obtained from board of supervisors.—*Stoffet v. Estes*, 104 / 208. See also *Valentine v. Water Power Co.*, 128 / 289.

(227) SEC. 4. Every such board of supervisors shall have power to make general rules and regulations as to the kind of bridges, and the mode of constructing the same over any such stream, as mentioned in section two of this chapter, when such stream shall not be navigable for boats or vessels of fifteen tons burden, or to grant permission for building the

Board may  
prescribe kind  
of bridges.

same, without the notice or hearing above provided, in such manner as shall be judged proper with reference to the passage of boats, rafts and timber.

Relative to  
state and territorial roads.

(228) SEC. 5. The boards of supervisors of the several counties within this State, are hereby authorized and empowered to cause to be laid out, established, altered, discontinued or opened, all State and territorial roads heretofore or now laid out, or hereafter to be laid through, or within their respective counties, whenever they may deem it for the interest of the public.

POWER OF SUPERVISORS: See *Delta Lumber Co. v. Board of Auditors*, 71/572; *People v. Kimball*, 4/95; *People v. Nankin*, 15/347; *Att'y Gen. v. Supervisors*, 34/46; *Pen. Sav. Bank v. Ward*, 118/87. State roads are only such as have been laid out by legislative authority.—*Davies v. Supervisors*, 89/295. The record of the board must show that the interest of the public was considered in discontinuing a road.—*Pearsall v. Supervisors*, 71/438; 74/558. And must show that the board acted within the limits of the power conferred.—*Id.* An occupant of land traversed by a highway with reference to which his houses, wells, barns and orchards have been located must have notice of its proposed discontinuance by the board of supervisors.—*Curry v. Place*, 99/525.

May order survey, etc., of such roads.

(229) SEC. 6. Whenever the board of supervisors of any county are petitioned to by at least twelve freeholders of each of the townships through which any such road or roads may pass, they shall, upon such petition, authorize the commissioners of highways of such townships to cause the line of said road or roads, within their respective townships, to be surveyed and located therein, and such commissioners shall report such survey and location to the board of supervisors of their county; and upon examination of said survey and report, said board may declare such road or roads duly laid out, established, discontinued, opened, or altered, as the case may be.

The petition must show of what townships the petitioners are freeholders and residents; and that a sufficient number from each township signed.—*Pearsall v. Supervisors*, 71/438; 74/558. This section was not intended to confer any power or impose any restriction on the action of the board, but simply to impose the duty of acting when any petition therein mentioned should be presented.—*People v. Supervisors*, 20/95. Where the right of eminent domain is exercised by any other authority than highway commissioners in laying out or discontinuing highways, the constitutional requirement of a jury is retained.—*Pearsall v. Supervisors*, 71/439; 74/558. That the legislature may constitutionally alter or vacate a State road and delegate the power to the boards of supervisors, see *Bristol v. Supervisors*, 20/95; *Pearsall v. Supervisors*, 71/438; *Davies v. Supervisors*, 89/296.

Recording of surveys.

(230) SEC. 7. Whenever said road or roads shall be surveyed, laid out, altered or established under the provisions of this chapter, it shall be the duty of the board of supervisors to whom such petition and report may have been made as aforesaid, to notify and require the commissioners of highways of the several townships through which said road or roads may pass, to furnish to the several township clerks of such townships, the minutes of all surveys within their respective townships, and the same shall be recorded by said clerks in the same manner that township roads are recorded.

Assessment of damages for land used.

(231) SEC. 8. Any person feeling himself aggrieved by the action of the board of supervisors by the laying out, alter-

ing or discontinuing any road designated by this act, may have his damage assessed by a jury composed of twelve freeholders residing in the township where the land through which said road has been laid out, altered or discontinued, is situated. Such person so complaining as against the action of such board, may, within thirty days after receiving notice in writing from the clerk of such board of supervisors of any county that any road has been laid out, altered or discontinued across lands owned by him, go before any justice of the peace in said township where such land is located and file with such justice a petition setting forth the fact of the laying out, altering or discontinuing of such road running through lands owned by him, whereby he has been, or is likely to be damaged, and further praying the court that a venire be issued summoning a jury of twelve freeholders of said township to determine the necessity of laying out, altering or discontinuing said highway, and the taking of private property therefor, and the amount of such damage he has sustained, or is likely to sustain from the action of such board as aforesaid. On the receipt of such petition the said justice shall at once give notice to the petitioner in writing of the date when said petition will be heard before him, and shall also notify in writing the supervisor of said township of the time and place when the same will be heard, which shall not be less than six days from the date of the petition, nor more than twelve. And on the date and at the hour mentioned in said notice the justice shall direct any constable of said township then present to write the names of twenty-four freeholders from which to select a jury of twelve persons. On the compliance with such order by the constable, the supervisor, if he be present, and if not present, then the justice aforesaid, together with the person filing such petition, shall proceed to strike, each alternately, from such list, the names of six persons, and the remaining twelve names on said list shall constitute a jury for the purposes aforesaid. But in case any of such jurors on the original list shall be unable to sit, then the court shall direct the officer present to summon talesmen to take their places until such panel is full. When such panel is completed, the justice shall swear said jurors to well and truly determine as to the matters set forth in the petition of the person making the same. Said justice shall have full power to issue subpoenas and to compel the attendance of witnesses, the same as he would have in matters triable before him; and all proceedings on the hearing of said petition shall be conducted as nearly as may be as are trials before justices of the peace. If the jury, on hearing all of the evidence both for and against the allowance of damages, and the necessity for the taking of said lands for private purposes, shall determine that the person claiming to be aggrieved, is entitled to damages, then they shall determine as to the amount, and the necessity for the

Petition for jury.

Notice of hearing.

Empanelling of jury.

Proceedings before justice.

Determination of jury.

Apportion-  
ment of dam-  
ages.

Proviso, costs.

Proviso, dis-  
agreement of  
jury.

taking of said lands, and under their hands certify to the justice such sum, and the necessity aforesaid, and, in case they determine that such person is not so entitled, they shall certify this fact to said justice, who shall, upon the rendition of such verdict, file the same, and within ten days from the date of its rendition, transmit the same to the clerk of said county, and shall also serve a copy of the verdict and notice of all proceedings, in relation to said application upon all persons whose lands are affected by said application, which notice shall be full and explicit as to any and all proceedings had therein, and shall at the next regular meeting of the board of supervisors of his county, present the same to such board and cause it to be entered upon the minutes of such board. In case damages have been awarded, as aforesaid, then such board of supervisors shall apportion the amount to the several townships in said county, and the same, when so raised, shall go into and become a part of the general fund of such county, and they shall, at the same time, issue an order to the person or his representatives or assigns, as the case may be, for such sum on the county treasurer, and payable out of any fund in the county treasury not otherwise appropriated: Provided, That the person thus claiming damage shall file with such justice at the time he files his petition, a bond in the penal sum of fifty dollars conditioned to pay all costs of such justice, officer and jury; but in case damages are awarded, then the costs of such proceedings shall be certified by said justice along with the award and become a part and parcel thereof, and payable to said petitioner in addition to the award of the jury: Provided further, That in case the jury first summoned shall not agree, then the said cause or hearing shall stand adjourned to some day fixed by said justice, but not for a longer period than ten days; and on the day to which the same shall be continued a jury shall be empaneled and the matter submitted as hereinbefore directed.

Right of jury.—Pearsall v. Supervisors, 71/430.  
Appraising of damages.—People v. Supervisors, 20/102; Pearsall v. Supervisors, 74/550.

Record of pro-  
ceedings of  
board.

(232) SEC. 9. Every order, resolution and determination of such board of supervisors, made in pursuance of this act, shall be recorded in the records of such board, and signed by the chairman and clerk of such board.

RECORDED AND SIGNED: This section is mandatory and was enacted for the protection of both public interests and private rights.—Pearsall v. Supervisors, 71/438. The above section includes all the proceedings required by law to be entered upon the records of the board.—Weston v. Monroe, 84/341. The failure of the chairman of the board to sign the record of the proceedings of the board in equalizing the assessments and apportioning the State tax is fatal to the validity of a tax deed based thereon.—Weston v. Monroe, 84/341. The record of the board of supervisors may not be collaterally attacked because of the failure of the clerk to sign the record before the final adjournment, where the record had been signed by the clerk during his term of office, and had been read and approved at a subsequent meeting, the record of which was properly authenticated.—Derosia v. Lee, 158/64.

(233) SEC. 10. The board of supervisors of any county in this State bordering on any navigable stream which is the boundary line between such county and a county in another state, is hereby authorized, in conjunction with the board of supervisors of such adjoining county in such other state, to construct and maintain a bridge or bridges across such river at a place or places within the limits of such boundary as may be agreed upon by said respective boards of supervisors, whenever said board of supervisors in this State shall deem it necessary, and to enter into a contract with such board of supervisors of the adjoining county of such other state for the construction, maintenance and repair of such bridge or bridges. Construction of bridges jointly with another state.

(234) SEC. 11. The board of supervisors of such county in this State as aforesaid, is hereby authorized to levy a special tax on all the property of such county, excepting property within the corporate limits of any city in such county, which builds and maintains its own bridges, or bond said county, exempting from any tax levy or any liability whatsoever for the payment of said bond all property within the corporate limits of any city in such county which builds and maintains its own bridges, for such part of the cost of building, maintaining and repairing said bridge or bridges as shall be allotted to said county by any arrangement between said respective boards of supervisors respecting the building, maintaining, repairing or rebuilding the said bridge or bridges: Special tax. Provided, That in case such bridge or bridges shall be constructed over any navigable stream the same shall be so constructed as not to prevent or hinder the navigation of such stream by the usual crafts plying thereon: Proviso. Provided further, That any such bridge built upon any stream shall be so built, constructed and maintained as not to interfere with the ordinary uses of said stream for driving logs or floating other materials or boats therein, and all such bridges so constructed shall be constructed and maintained so as to offer and afford reasonable, adequate and proper means for the passage of boats, vessels, sawlogs, floating timber and rafts through the same. Proviso.

## CHAPTER XVII.

### TOLL ROADS.

(235) SECTION 1. Whenever any plank road company may wish to use any part of a public highway or street, for the construction of their plank road over the same, such company shall apply to the supervisor and commissioner of highways of the township, or common council of any incorporated city or the president and trustees of any incorporated village, as the case may be, in which said highway or street is Franchise for plank road.

situated, for the purchase or release of the same, and it shall be the duty of such supervisor and commissioner or common council of any incorporated city, or the president and trustees of any incorporated village, as the case may be, to examine, at the expense of such company, so much of any such highway or street as may be wanted as aforesaid by such company, and if, in the opinion of a majority of such supervisor and commissioner, or common council of any incorporated city, or the president and trustees of any incorporated village, as the case may be, the public interest would not be prejudiced by granting the application of such company, said supervisor and commissioner, or a majority of them, or common council of any incorporated city, or the president and trustees of any incorporated village, as the case may be, may in writing, signed by them, grant to such company a right to enter upon, take and use such highway or street for the purpose of the construction, maintenance and use of a plank road thereon, under the provisions of the charter of such company and upon filing such grant in the office of the township clerk of such township, the said company may at once enter upon, take and use such highway or street for all the purposes aforesaid: Provided, That nothing herein contained shall prejudice any legal claim for private damages of any person on the line of such public highway or street, by reason of the granting the said highway or street to the use of any such company: And Provided further, That the amount received by said supervisor and commissioner for granting any such highway to any such company, shall be by them expended in improving the highways, or in purchasing the right of way for highways in such township.

Proviso.

Proviso.

Appraisal of damages.

Proviso.

(236) SEC. 2. Whenever any portion of any public highway shall be granted to the use of a plank road company, as aforesaid, any person who shall claim damages by reason of the granting such highway to such use, as aforesaid, may have such damages appraised within the same time and in like manner as is provided by law for the appraisal of damages, on the altering and laying out of public highways: Provided, That the same notice shall be given to one of the board of directors, as is required to be given to the highway commissioner; and if any damages be awarded or appraised, the person in whose favor the same is awarded may bring an action of assumpsit for the recovery of the same against the company, and if in any such action the court shall be of the opinion that such person had any legal ground to claim damages against such company, such person shall be then entitled to a judgment for the amount of damages so awarded and legal costs of suit.

Construction of road.

(237) SEC. 3. Every plank road made shall be laid out four rods wide, and shall be so constructed as to have at least eighteen feet width of good, smooth and permanent road, nine feet of which, at least, shall be made of plank not less than

three inches thick, and of such grade as not to exceed an ascent or descent on any part of said road of more than one foot in ten feet, and which roadway shall be constructed so as to permit carriages and other vehicles conveniently and easily to pass each other, and also as to permit carriages readily and easily to pass on and off where such road is intersected by other roads; and no obstruction shall be suffered unnecessarily to remain upon such plank road at any such intersection.

(238) SEC. 4. All companies that have been or may be hereafter organized subject to the provisions of this act, instead of nine feet in width of plank road required by section three of this chapter may construct all or any portion of said road of gravel instead of plank and may substitute gravel instead of plank where plank is now used or of stone so broken as to subserve the purposes of said gravel: <sup>Gravel road bed.</sup> Provided, That said gravel portion of said road shall in all cases be not less than nine feet in width and the gravel of which the same is constructed be not less than nine inches in depth of gravel consisting of at least sixty-five per centum of pebbles and not more than thirty-five per centum of sand loam and bonding material, and shall in all cases be of such depth and quality as to make at all times a good, firm and hard road: <sup>Proviso.</sup> Provided, That said company shall be subject to all the provisions and penalties in regard to the keeping said gravel road in repair as is provided for in an act relative to plank roads, approved March thirteen, eighteen hundred forty-eight, as amended. And also an act relative to appointment of toll road commissioners, and so forth, approved April twenty-two, eighteen hundred ninety-seven.

Erin Twp. v. Plank Road Co., 115 / 465; People v. Plank Road Co., 125 / 367.

(239) SEC. 5. The commissioner of highways of any township, the mayor of any incorporated city, or the president of any incorporated village, through any portion of which any plank road may be or shall have been constructed, whenever satisfied that the public good and safety, by reason of the amount of travel on such road, requires more than eighteen feet in width of good, smooth, and permanent road, or that that portion of any plank road which has been prepared and constructed for travel is of insufficient width, may, on at least fifteen days' written notice to the president or secretary of said company, apply to the circuit court of the county in which said township, city or village is located, for an order to widen said road bed. The court, on such application, and on hearing the respective parties, and on reviewing the premises, if the said court shall deem such view necessary, shall make such order in the matter as to the said court may seem just and proper: <sup>Order to widen road bed.</sup> Provided, That the court shall not have <sup>Provi<sup>d</sup></sup> power to extend the width of said road-bed beyond two and



machines shall not be used or observed by the respective parties and no interference or obstruction of any kind shall be allowed. The court shall have the right to direct the payment of costs at its premises as shall be deemed just and equitable.

Section 10. (10) That the

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(10) That the qualified voters of any township may at a regular or special meeting allow any person or persons to use the public highways of such township for the purpose of constructing and maintaining a plank or gravel road thereon. Upon the written request of the person or persons of gravel road company filed with the township clerk accompanied by a fee of twenty dollars it shall be the duty of the township clerk to give notice to the voters of the township that the question of allowing the plank or gravel road company making the request to use the highway or highways of the township designated in such written request shall be submitted to a vote of the qualified voters of such township at the annual township meeting. Such notice shall contain a full and complete description of the road and bounds of the highway in question shall state the time of the annual meeting, and shall be posted in five or more conspicuous public places in the township for at least twenty days prior to the annual meeting. The request required by this section to be filed with the township clerk shall be signed by twenty or more freeholders of the township shall contain a description in full of the highway so desired to be used and shall be filed with the township clerk at least thirty days preceding the annual township meeting in any year. The vote in any township upon the question of allowing any plank or gravel road company to use any of the highways of such township for the purposes aforesaid shall be by ballot. The ballot shall contain the words "Shall the right of way be granted?" "Yes" and "No." Such ballots shall be printed and furnished by the township board. The voter shall designate his choice by making a cross in the square preceding the words "Yes" and "No" and the ballots shall be received by the board of election inspectors deposited in a separate ballot box covered and the results declared in the same manner as is provided by statute in the case of the election of township officers. Provided That the right to construct such plank or gravel road shall not be deemed to have been granted unless the affirmative vote shall be equal to a majority of all the votes cast at such annual township meeting. Where the right of way is not granted the same proposition shall not be again submitted within two years.

(11) That any such corporation shall be liable for all damages that may be sustained by any person or persons to

themselves or property, in consequence of neglect or omission to keep such road in reasonable repair and in condition reasonably safe and fit for public travel.

(242) SEC. 8. In all cases where any plank road company has or may at any time hereafter, become authorized or permitted to enter upon, take or use any public highway or street, on the route of its plank road, and to construct its plank road thereon, or to use and maintain the same for a plank road, and to actually take possession of said road or street, by laying down sections or portions of plank, and delivering plank upon such road or street, such company shall, at all times, so far as the formation of the soil and season of the year will permit, keep in good order and condition so much of said road as it shall not have planked, until it shall have planked the same; and if any company shall neglect to keep such highway or street in such order and condition, it shall be deemed to have abandoned and forfeited the right to enter upon, take or use such public highway or street, as to so much as shall not be planked.

Company to keep road in condition.

**FORFEITURE OF FRANCHISE:** Forfeiture of franchise by plank road company after six years' negligence.—*Coon v. Plymouth Plank Road Co.*, 32/249. Upon the forfeiture of its charter and the abandonment of a plank road by the company maintaining it the land becomes a public highway and does not revert to the abutting owner.—*Highway Commissioners v. Cobb*, 104/395.

**LIABILITY:** The fact that a bridge constituting a part of a plank road company's road is destroyed without its negligence does not relieve it from the duty to rebuild.—*People v. Plainfield Gravel Road Co.*, 105/9. A plank road company extending its roads by amendment of its charter is under the same liability to keep the part added by the amendment in repair as that originally included.—*Wolcott v. Gravel Road Co.*, Id. The defendant in accepting its franchise assumed the duty of keeping its way in repair, and its charter, when made was subject to all future reasonable and proper police regulations enacted for the protection of the lives and health of the people and the prevention of injury thereto.—*Carver v. Plank Road Co.*, 69/616.

(243) SEC. 9. Every plank road company and the owners of any such plank road company, by purchase or otherwise, shall cause to be laid down and kept closely together and in an even manner so that the surface shall be uniform, the plank upon its road; or, if said company or the owners shall have built any portion of their road or may build any portion of the same of gravel or stone so broken as to serve the purpose of gravel, they shall cause the said gravel or broken stone of the proper quality and quantity to be placed upon the road and kept in a uniform manner, of the width and depth required by law; and, in case of default, they shall forfeit the right to receive any toll upon said road. And the prosecuting attorney of the county, on complaint of the highway commissioner of any township in which any portion of the road defectively constructed or out of repair lies, may institute a suit in the circuit court for the same county, in chancery, to have such default judicially ascertained and declared; but, if such prosecuting attorney is interested in said suit or in said plank road company, or shall refuse or neglect to commence said suit, then the highway commissioner of such

Manner of planking.

Placing of gravel.

Duty of prosecuting attorney.

Commissioner may employ attorney.

Jurisdiction of court. township, by consent of the township board of such township, may employ an attorney, at the expense of such township, to commence said suit, and the same may be prosecuted in the same manner as if it had been commenced by said prosecuting attorney. The said circuit court, in chancery, for the respective counties, shall have full jurisdiction of all cases arising under this act to hear, try and determine the same upon bill or petition filed according to the usual course and practice of these courts, and may grant injunctions in all such cases restraining the company or the persons owning or operating said road from collecting toll from persons who travel over the same, and may fully determine said cause.

**REPAIR OF ROAD:** Under this section a company cannot abandon a bridge constituting a part of its road and thereby escape liability to keep the same in repair.—*People v. Plainfield Gravel Road Co.*, 105/9. Proceedings to enjoin road from taking toll for neglect to keep road in repair.—*People v. Plank Road Co.*, 67/5. Where the stockholders of a turnpike company by resolution abandon a portion of its road which is out of order, an action will immediately lie to forfeit its charter for failure to keep the same in repair.—*People v. Plainfield Gravel Road Co.*, 105/9.

Condemnation of rights. (244) SEC. 10. Any board of supervisors of any county in the State of Michigan, in which any toll or plank roads are maintained under the laws of the State are hereby authorized by proper resolution to institute proceedings for the condemnation of all the rights of such toll and plank road companies in any highway in such county.

Supervisors to describe condemned road. (245) SEC. 11. Whenever the board of supervisors of any county shall deem it necessary for the use and benefit of the public to condemn the rights of any toll or plank road in such county and to establish such road as a public highway, such board of supervisors shall by resolution so declare, and also describe the toll or plank road to be condemned, and shall direct the prosecuting attorney to institute proceedings in the circuit court of such county to carry out the objects of such resolution.

Petition in chancery. (246) SEC. 12. Upon the adoption of the board of supervisors of such resolution, it shall be the duty of the prosecuting attorney of such county to prepare and file in the name of the county in the circuit court of such county, a petition signed in the name of such county by said prosecuting attorney in his official capacity, which shall allege the adoption of such resolution, and annex thereto a copy thereof, and describe the toll or plank road to be condemned and set forth the names of the owners and others interested in such toll or plank road, so far as the same can be ascertained, and shall set forth that it is necessary to condemn the rights of such toll or plank road for the public use and benefit; and pray that a jury may be impaneled to ascertain and fix the just compensation to be paid therefor. The petition may pray for any other or further relief being necessary within the objects of this act.

Payment of damages and award. (247) SEC. 13. The damages and compensation awarded by the jury in such cause and the expenses thereof shall be

paid by such county, to be raised by a general tax to be levied and collected according to the laws with reference to general taxes in such county.

(248) SEC. 14. Upon filing said petition it shall be the duty of the clerk of said court to issue a summons against the respondents, named in the petition, commanding them to appear before said court at a time and place to be named in said summons, not less than twenty nor more than thirty days after date of the same and show cause, if any they have, why the prayer of said petition should not be granted. Summons.

(249) SEC. 15. Said summons shall be served by the sheriff or other proper officer at least five days before the return day thereof upon all the respondents found in the county, by exhibiting the original and delivering a copy to each of them. If any respondent cannot be found or is a non-resident, or for any cause cannot be served, the officer shall make return of such fact, and the court, upon the return day of said summons, shall make an order requiring said respondent or respondents to appear and show cause why the prayer of the petition should not be granted, and that service upon such respondents be made by publishing a certified copy of such order for three successive weeks, at least once each week, in at least one newspaper published within the county, the last publication to be at least six days before the day fixed in the order for appearance. Alias and pluries summons may be issued, and the court may adjourn the proceedings from time to time as there shall be occasion and as in other civil cases. Service of such order for appearance shall be sufficient notice of the proceedings to bind the respondents and the property represented by them. The return of the officer upon the summons of due service and affidavit of publication of the order for appearance, if any, shall be filed in the clerk's office before a jury shall be impaneled, and shall be sufficient evidence of service on the respondents and of the manner of service. Service of summons.

(250) SEC. 16. On the return of the summons, or on some subsequent day to which the proceedings are adjourned, if no sufficient cause for the contrary has been shown, the court shall make an order that a jury may be impaneled in said case. Such jury shall be composed of twelve freeholders of the county, and shall be selected and impaneled in the same manner as jurors are impaneled for the condemnation of property for the convenience of the public as highways under the general statutes of the State of Michigan. The jurors so impaneled shall be sworn in substance that they will well and truly ascertain and determine the necessity for taking for the use and benefit of the public, the rights, property and interests, which the petition describes and prays to be taken; and if they shall determine that it is necessary to take such rights and property, that they then ascertain, determine and award the just compensation to be made there- Alias and pluries summons.

Return of officer.

Order for jury.

Oath to jury.

for, and faithfully and impartially discharge all such other duties as devolve upon them in such cause, and unless discharged by the court, a true verdict give according to the law and the evidence. The jury shall hear all proofs and allegations of the parties, and be instructed as to their duties in the law of the case by the judge of the court, and shall retire under the charge of an officer and render their verdict in the same manner as on the trial of an ordinary civil case, and shall determine by their verdict the necessity for taking such private interest, or property for the use and benefit of the public, for the purposes for which it is proposed to be taken, and in case they find such necessity exists, they shall award to the owner or owners of said plank or toll road or rights taken, such compensation as they shall deem just.

Proceedings  
of jury.

Right of  
appeal.

(251) SEC. 17. Any respondent, considering himself aggrieved by the award of the jury in said cause, shall have the right of appeal from such judgment to the supreme court in the same manner and with like effect as appeals from a judgment in a court of law as now authorized by the statutes of this State.

Payment of  
judgment and  
termination of  
plank road.

(252) SEC. 18. When the verdict of the jury shall have been finally confirmed by the court, and the time in which to take an appeal has expired, or if an appeal is taken, on the filing in the court below of a certified copy of the order of the supreme court confirming the judgment, it shall be the duty of the clerk of the court to transmit to the board of supervisors of such county a certified copy of such judgment, and thereupon the board of supervisors shall pay or cause to be paid to such respondents the amount of such judgment awarded by the jury in said cause, and upon the payment thereof all the rights, property, privileges and other interests of such respondents in said county shall be forever terminated, and the highway thus condemned shall become a public highway of such county.

Writ of  
assistance.

(253) SEC. 19. The court shall have power to make an order in said cause in case of the refusal of any of the parties to accept the award of the jury in said cause, to direct to whom the money is to be paid, and when and where it shall be deposited by the petitioner. Said court shall have all the usual powers in said cases. In case of the resistance or refusal on the part of any person to the said petitioner or its rights, officers or servants, entering upon and taking possession of such highway, toll or plank road, or property interests held thereby, for the uses for which the same were taken, at any time after the amount of compensation aforesaid is actually paid or deposited, the said petitioner may apply to the court, and shall be entitled to a writ of assistance to put them in possession of such highway, toll or plank road.

Municipality  
may purchase  
rights of road.

(254) SEC. 20. Any city, village or township of the State in which any toll road company has the right to maintain gates or collect toll on any street, avenue or highway within

said city, village or township, may purchase all or any part of the rights, roads, property, privileges or franchises of said company in such street or highway at a valuation to be agreed upon between the common council of the city or village, or the township board of such township and the board of directors of such toll road company.

(255) Sec. 21. In case no agreement can be reached for such purchase as aforesaid, such city, village or township is authorized to condemn such rights; in which condemnation such city, village or township shall proceed as in the condemnation of lands for streets according to the provisions of act number one hundred twenty-four of the public acts of eighteen hundred eighty-three, and the acts amendatory thereof, so far as the same are applicable, but the damages to which such companies may be entitled shall be paid wholly by such city, village or township.

Disagreement  
as to purchase  
price.

(256) Sec. 22. Any toll or plank road company organized under the laws of this State, is hereby authorized to sell such portion or portions of its rights, road, property, privileges and franchises as lie within any city, village or township, to such city, village or township on such terms as may be mutually agreed upon, and the sale or condemnation of any portion of such road and franchise as lies within any city, village or township to or by such city, village or township shall not deprive any such toll or plank road company from receiving and collecting toll on such length of road as it may have remaining after such sale or condemnation, at the rate of toll per mile as now fixed by law.

Company  
authorized to  
sell road, etc.

Not to de-  
prive right to  
collect toll.

(257) Sec. 23. When any city, village or township shall have acquired any rights, roads, property, privileges or franchises of any toll or plank road company, as aforesaid, by purchase or condemnation as hereinbefore provided (whether such rights, roads, property, privileges or franchises have been acquired by such city, village or township prior to this act, or shall hereafter be acquired by such city, village or township), the common council of such city or village or the township board of such township shall raise by special assessment upon all the real and personal property within such city, village or township, such amount of money as may have been agreed upon between such toll or plank road company and such city, village or township for the sale and purchase of any such rights, roads, property, privileges or franchises or portions thereof, of any toll or plank road company as aforesaid, or in the event of condemnation proceedings as herein provided, such sum of money as shall have been awarded to such toll or plank road company in such condemnation proceedings. Moneys raised by such special assessments shall be held as a special fund to pay such cost and expense of such purchase or condemnation. Such special assessments shall be assessed, levied and collected at the time and in the manner provided for the assessing, levying and

Assessment for  
purchase price.

	collecting of the general fund or general taxes of such cities, villages and townships.
Toll road commissioner, duties, etc.	(258) SEC. 24. After the passage of this act it shall be the duty of the commissioner of highways of any township through which any toll road may enter or pass, to act as toll road commissioner, and he shall require all toll road companies in any such township in this State to construct, reconstruct, repair and maintain their roads in good repair, and of the same material and in the same manner as required by their charters, within six months after the passage of this act.
When company deemed to have abandoned road.	All toll road companies who fail or neglect to comply with the provisions of this act shall be considered to have abandoned their road, and they shall cease thereafter to take toll, and no person traveling over such toll road shall be required to pay toll thereafter.
Penalty for neglect to repair roads.	(259) SEC. 25. All toll road companies who comply with the provisions of this act, within the time prescribed in section twenty-four of this chapter shall be required by said township toll road commissioner to maintain all such toll roads as herein required, and in default thereof, after being notified by said toll road commissioner to repair such roads as herein provided, for any three consecutive months, then said toll roads shall be considered abandoned, and all such toll roads shall have no further right to collect toll, and shall cease to take toll thereafter, and no person shall be required to pay toll for traveling thereon after such abandonment as herein provided.
Commissioner to examine roads.	(260) SEC. 26. Said township toll road commissioner shall examine all toll roads in his township when he shall have reason to believe they may not be properly kept in condition as provided in their charters. Also, when required so to do by any taxpayer in any township into or through which any toll road may run, who shall make affidavit that he believes any such toll road company is violating any of the terms or conditions of its charter, or is not keeping its road in good condition, and present such affidavit to such toll road commissioner, and in case he shall find such road or any portion thereof not kept up to the requirements provided herein, he shall immediately notify such toll road company of such defects as he may find, and he shall require them to repair and put into such condition as herein required within sixty days. And in default thereof, the commissioner shall immediately make a certificate of such fact and file the same with the township clerk of his township, and such toll road shall be considered abandoned, and all such toll road companies shall cease to take toll for traveling thereon after such abandonment, and no person shall be required to pay toll for traveling thereon after such abandonment. After said certificate has been so filed, said toll road commissioner shall notify any such toll road company in writing of the filing of such certificate, and said company shall have no right there-
Commissioner to certify fact of default.	
To notify company.	

after to obstruct said road or prevent persons from passing over the same, or any part thereof, and it shall be the duty of said toll road commissioner to prevent such obstructions, or to remove them if placed in said roads, as provided in any other of the highways of his township. Whenever any toll road commissioner, after a full and complete investigation, and hearing of the evidence offered by parties concerned, shall determine that the said toll road in question is not maintained in accordance with the conditions and provisions of its charter, said toll road, or toll road companies, may within twenty days after such finding, appeal, as in other cases provided, from the decision of said commissioner to the circuit court in chancery of the same county. But the orders of said commissioner shall be and remain in full force until revoked by the order of the said court.

(261) SEC. 27. Any township highway commissioner, coming under the provisions of this act, who shall refuse, fail or neglect to perform his duties as herein provided, shall be guilty of a misdemeanor, and upon prosecution and conviction, shall be fined not to exceed one hundred dollars, or imprisonment in the county jail not to exceed ninety days, or both, in the discretion of the court.

Appeal.

Penalty for neglect of duty by commissioner.

## CHAPTER XVIII.

### HIGHWAY ORDERS.

(262) SECTION 1. Whenever any order for the payment of money lawfully drawn by the highway commissioner of any township within this State upon the treasurer of such township, shall, after the passage of this act, have been duly presented to such township treasurer for payment, and payment thereof shall not be made within six months from such presentation, by reason of lack of funds for the lawful payment of such order, such treasurer shall, at the request of the holder of such order, make a statement in writing of such facts and deliver the same to such holder, and such holder may present such order with such statement to the township clerk of such township, and such clerk shall thereupon make a minute of the number, date, and amount of such order, and the date of its first presentation to such treasurer, and shall make an endorsement on such order, showing such presentation to him.

Proceedings when payment is delayed six months.

**COLLECTION OF ORDERS:** Mandamus lies, not assumpsit, to compel a township board to pay a valid order given by the highway commissioner on the township treasurer.—Just v. Wise, 42/573. A delay of more than six years to demand pay of highway orders, or to apply for mandamus to compel such payment, if unexplained, will bar such relief.—Avery v. Twp. of Krakow, 73/622. See section 180 and notes.



Clerk to report  
amount of  
such orders.

(263) SEC. 2. The township clerk of each township shall include in the statement annually required to be made by him to the supervisor of moneys proposed to be raised in said township by taxation, a statement of the amounts of all such orders, before then minuted by him, with a further statement of the amount due and to become due as interest on such orders up to the first day of January succeeding such statement.

A special highway tax cannot be levied upon the property of a township to pay the indebtedness of road districts therein.—McFarlan v. Twp. of Cedar Creek, 93 / 558.

Orders not to  
be drawn in  
excess of au-  
thorized funds.

(264) SEC. 3. Hereafter it shall be unlawful for any highway commissioner to draw or issue any order or orders for the payment of money upon the township treasurer of any township, or to contract for, or to permit to be done or furnished any labor or materials upon or for the highways or bridges in such township, for any sum or sums greater than the highway funds theretofore authorized by the votes of such township, or otherwise provided by law, except in cases especially provided by existing laws.

Penalty for  
violation.

(265) SEC. 4. Any highway commissioner offending against the provisions of the preceding section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than ten nor more than one hundred dollars, or by imprisonment in the county jail of the proper county, not exceeding three months, in the discretion of the court.

## CHAPTER XIX.

### CULVERTS, OR CATTLE-PASSES AND HEDGES.

Who may con-  
struct  
culverts, etc.  
Proviso.

(266) SECTION 1. It shall be lawful for all persons owning land on opposite sides of any public highway to construct culverts or cattle-passes under such highways: Provided, That formal application is made to, and permission obtained from the commissioner of highways of the township in which said land is situated, for such construction: Provided further, That such construction and maintenance shall be wholly at the expense of such applicant, his heirs and assigns.

Proviso.

Construction.

(267) SEC. 2. Such culverts or cattle-passes, when constructed, shall be of such material and according to such plan as the commissioner of highways shall direct.

Removal of  
culverts, etc.

(268) SEC. 3. In case any such applicant, heirs or assigns shall fail to keep his culvert or cattle-pass already constructed, or hereafter to be constructed, in good repair, it shall be the duty of such highway commissioner to remove such culvert or cattle-pass from such highway at the expense of such applicant, or owner, heirs or assigns, such expense

to be collected by suit in the name of such commissioner of highways in an action of trespass on the case before any justice of the peace of such township.

(269) SEC. 4. A record of such culverts or cattle-passes, and of all proceedings relating thereto, shall be kept in the manner substantially as is provided for the record of private roads. Record of culverts.

(270) SEC. 5. It shall be the duty of every owner, occupant or person having charge of lands in this State, to cut or trim, or cause to be cut or trimmed, to a height not exceeding four and one-half feet and a width not exceeding three feet, all hedges or hedge rows along or on the public highway or adjacent thereto in each and every year, except such hedges as shall have been set out for the protection of fruit trees and nursery stock. Trimmings or brush from such hedge rows shall not be left lying within the limits of the highway, but shall be forthwith removed: Hedges, etc., trimming of. Provided, That Proviso. this section shall not apply to streets or highways within incorporated cities.

Am. 1911, Act 24.

(271) SEC. 6. Any owner, occupant or person having charge of lands who shall fail to comply with the provisions of this act, on conviction before a court of competent jurisdiction, shall be punished by a fine not more than ten dollars, together with the cost of prosecution, and in default of payment of the same shall be imprisoned in the county jail of the county where the land is situated, for a period not exceeding twenty days. Penalty for neglect.

## CHAPTER XX.

### STATE ROADS.

(272) SECTION 1. In surveying and locating State roads and ditches hereafter to be surveyed and located, it shall be the duty of the local commissioner, or other person or persons having charge of the same, to cause the survey to be made on the center line of the road or ditch to be located, and as follows, and the field notes of such survey shall be made to show: The precise location of the beginning, terminus, and intersections, with section lines, by course and distance, to the nearest convenient monument of the United States survey; mile posts shall be set at the close of each eighty chains, and the miles so marked off shall be numbered consecutively from the beginning; the distances shall be accurately measured, each eighty chains by itself, from mile post to mile post, and the character of the country shall be carefully noted as passed, so as to show the timber, soil, sur- Survey of state roads and ditches.

face, and topography in detail along the line; all angles in the line shall be established with proper monuments and witnesses thereto, the course of the line from angle to angle shall be accurately given in degrees and minutes, and the particular magnetic variation employed shall be given; in all cases where any bridge may be required on line of road, the field notes of the survey shall be made to show width of stream, height, character of banks, and maximum height of water at flood, all measured with reference to the height of water at its ordinary state; and the length of bridge required shall be separately stated; in all cases of surveys for ditches, in addition to the mile and angle posts hereinbefore required, there shall be section stakes set and the level actually taken at the end of each two chains of the line.

Record of  
surveys.

(273) SEC. 2. It shall be the duty of the local commissioner or other person or persons having charge of the location and survey of any State road or ditch, which has not been previously recorded, to cause a full and complete record of every such survey to be made immediately, and filed in the office of the state swamp land commissioner at Lansing. Such record shall be made upon blanks which said state swamp land commissioner is hereby required to furnish, and shall consist of a full copy of the field notes of the survey made, upon the right hand page, and a full delineation of the same platted upon the opposite page. The record of survey of any State ditch shall further include a separate delineation thereof in profile drawn to a scale eight chains per inch horizontal, and four feet per inch vertical. Said profile shall show the proposed grade line of the bottom of the ditch, the depth thereof in figures at each two chains of length, and the width on bottom and slope of sides proposed for such ditch. The surveyor shall endorse upon such record his certificate of the actual performance of the survey and of the date thereof. The local commissioner or other person or persons having charge of the location or construction of such State road or ditch, shall endorse upon such record his certificate that the survey was made under his direction and for the purpose set forth.

State swamp  
land com-  
missioner to  
record survey  
after approval.

(274) SEC. 3. After the survey of any State road or ditch shall have been approved by the board of control of state swamp lands, the state swamp land commissioner shall cause a full and complete transcript of the record of such survey to be made and filed in the office of the register of deeds of the county or counties in which the same is located. And said register or registers with whom any such transcript may be filed shall carefully preserve all files in proper order in his said office and deliver the same to his successor in office.

Expenses, al-  
lowance and  
audit of.

(275) SEC. 4. All necessary expenses for making surveys, field notes, and diagrams of such State roads or ditches required by this act, shall be paid by the several counties, re-

spectively, in that proportion in which they were incurred for making such surveys, field notes and diagrams of the territory in their respective counties, and it is hereby made the duty of the several boards of supervisors of any of the counties of this State, through which any State road or ditch may be located, to audit and pay their respective share of all necessary expenses of the surveys, field notes and diagrams provided for in this act.

(276) SEC. 5. All State roads which now are or hereafter may be within the corporate limits of any city or village within this State, shall be under the supervision of the common council or board of trustees of such city or village, with power to control, vacate or alter such roads within their corporate limits. Supervision of certain state roads.

## CHAPTER XXI.

### SIDEWALKS.

(277) SECTION 1. In all unincorporated villages, commissioners of highways are hereby authorized to lay out and expend such portion of the township highway funds in their hands or under their control as they shall deem, subject to the limitations of section seven of this chapter for that purpose for the construction, care and maintenance of suitable sidewalks and cross-walks in such villages. Sidewalks in unincorporated villages.

**CROSSWALKS:** Crosswalks are parts of the traveled way and the township is liable in case they are suffered to become unsafe to public travel.—*Frary v. Allen Twp.*, 91/667.

**SIDEWALKS:** Where a township has authorized expenditures and has expended public funds for the repair of sidewalks built by abutting owners in an unincorporated village in the township, which sidewalks are almost an essential to the use of the highways along which they are built, the township is liable for injuries to a traveler caused by defects in one of such walks, though the sidewalk has never been established by the township authorities.—*Welton v. Crystal Twp.*, 152/486.

(278) SEC. 2. Public sidewalks may be established, opened, improved, and maintained within the boundaries, and along the highways, within this State under the provisions of this act; and the townships and unincorporated villages of this State shall possess the authority herein prescribed, for the building, repairing, and preserving the same. Along the highways.

There is no law which requires a landowner to build or keep up walks, broad or narrow, along every highway, whatever may be the case where city authorities, under a city charter have been allowed to require it on their streets.—*Fletcher v. Scotten*, 74/212.

(279) SEC. 3. Public sidewalks shall not be less than four feet in width when constructed of earth, and may be laid out, altered, or discontinued, by the commissioner of highways of any township, upon the written application of a majority of the taxpayers abutting such walk. Manner of construction.

Descriptions in applications.

(280) SEC. 4. In applications for laying out or altering a sidewalk, the highway along which the walk is to be laid, or the extent to which it is proposed to be changed, shall be described in general terms, and when the application is for the altering or discontinuance of a sidewalk, such walk may be described by any means by which it is known; but if discontinuance of only a portion of the walk is asked for, such portion shall be specified.

Notice of application.

(281) SEC. 5. In case of an application the commissioner shall, within five days after receiving the same, issue a written notice stating the object of such application, and appoint a time and place of hearing, which notice shall be served by posting up the same in three public places in each highway district, along the line of the proposed sidewalk, ten days before the time of hearing.

Commissioner to determine necessity, etc.

(282) SEC. 6. The commissioner shall, at the time appointed, proceed to examine the route prescribed, and to ascertain and determine the necessity for laying out, altering or discontinuing a sidewalk pursuant to such application; and within five days after a final determination upon any application, he shall file a full record and return of his doings in the premises, with the township clerk.

Commissioner to build or repair.

(283) SEC. 7. If the highway commissioner shall decide that the building or altering of the sidewalk applied for is necessary and advisable he shall proceed to build or rebuild such walk or cause the same to be built or rebuilt and he shall have the general care and superintendence of such sidewalks, and for the purpose of building and repairing the same may use not to exceed one hundred dollars per year from the road repair fund of his township: Provided, That one-half the expense of building, rebuilding or repairing such sidewalks shall be paid by the owner of the property abutting such walk and, provided such abutting property owner shall neglect or refuse to pay his share of the building, rebuilding or repairing of such walk, the same shall be assessed against the property to be collected with the next general tax against such property.

Proviso, division of expense.

Penalty for riding or driving on walks.

(284) SEC. 8. Whoever shall ride or drive upon any sidewalk laid out according to the provisions of this act, except for the purpose of crossing the same, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five dollars and the costs of prosecution, or by imprisonment in the county jail of the county not exceeding ten days, or by both such fine and imprisonment, in the discretion of the court.

Unlawful to drive cattle, etc., on walks.

(285) SEC. 9. It shall be unlawful for any person, willfully, to drive any cattle, horses, sheep, swine or other animals, or to ride or drive any vehicle other than bicycles or tricycles, upon and along the sidepaths and sidewalks, whether constructed by private persons or public authority for the use of pedestrians and bicyclists, in the public high-

ways and roads of this State, outside of incorporated cities and villages: Provided, That such paths and sidewalks to be protected by the provisions of this act shall be on only one side of any roadway and in some manner separated and distinguished from the main traveled part of the highway: Provided further, That the location of such path or paths shall first have been determined by the commissioner of highways or the county road commissioner, such determination to be filed in the office of the township clerk or the clerk of the county, as the case may be: Provided further, That persons feeling themselves aggrieved at the decision of said highway commissioner shall have the right to appeal from his decision to the township board in the same manner as now provided by law in laying out and constructing highways.

Proviso.

Proviso.

Proviso.

(286) SEC. 10. It shall be unlawful for any person, willfully to injure or destroy, or render impassable or dangerous for pedestrians or persons riding bicycles, any side-path or walk as described in section nine of this chapter.

Penalty for injury, etc., to walks.

(287) SEC. 11. It shall be unlawful for any person willfully to place upon the surface of any such public street or highway in this State, or upon any sidewalk or path appurtenant thereto, any glass, metal, stones, earthenware or other substance of a nature likely to cause injury to travelers, pedestrians, carriages, bicycles or other vehicles used on said road, or which are of a nature likely to wound, disable or injure any horse or other animal, or to cut, injure or puncture any pneumatic tire: Provided, Nothing contained in this section shall be so construed as to prohibit the public authorities from using any usual or proper means in the improvement of roads and highways.

Penalty for placing glass etc., on walks.

Proviso.

(288) SEC. 12. Whenever any such side-path or walk is constructed less than twelve feet from the center of the highway, it shall be considered as part of such highway. No side-path or walk within the meaning of this act shall exceed five feet in width. Nothing in this act shall be construed to prevent any person from driving across said paths or walks for the purpose of entering private property.

General regulations.

(289) SEC. 13. Any person found guilty of a violation of this act shall be deemed guilty of a misdemeanor and punished by a fine of not less than one dollar, nor more than ten dollars for each offense, together with costs of prosecution, or imprisonment in the county jail not exceeding ten days, or by both such fine and imprisonment in the discretion of the court; and shall further be liable in an action to any person who shall suffer injury to his person or property by reason of such violation of the provisions of this act.

Misdemeanors.

## CHAPTER XXII.

## RECOVERY OF DAMAGES.

Damages for  
personal in-  
juries.

(290) SECTION 1. Any person or persons sustaining bodily injury upon any of the public highways or streets in this State, by reason of neglect to keep such public highways or streets, and all bridges, sidewalks, cross walks and culverts on the same in reasonable repair, and in condition reasonably safe and fit for travel by the township, village, city or corporation whose corporate authority extends over such public highway, street, bridge, sidewalk, crosswalk or culvert, and whose duty it is to keep the same in reasonable repair, such township, village, city or corporation shall be liable to and shall pay to the person or persons so injured or disabled just damages, to be recovered in an action of trespass on the case before any court of competent jurisdiction.

STATUTORY ONLY: The liability of cities for injuries suffered in their streets is statutory.—McArthur v. Saginaw, 58/360; Roberts v. Detroit, 102/64. (citing Detroit v. Blackeby, 21/84; McCutcheon v. Homer, 43/483); McKellar v. Detroit, 57/159; McKellar v. Monitor Twp., 78/491; Clark v. North Muskegon, 88/309. And such liability depends upon a true interpretation of the statute creating it.—Dundas v. Lansing, 75/504.

LIABILITY UNDER ACT: For decisions illustrative of municipal liability, see Dundas v. Lansing, 75/499; Malloy v. Walker Twp., 77/460; Tice v. Bay City, 78/209; 84/461; Sebert v. Alpena, 78/165; McKellar v. Monitor Twp., 78/485; Blank v. Livonia Twp., 79/1; Campbell v. Kalamazoo, 80/655; O'Neill v. West Branch, 81/547; Moon v. Ionia, 81/635; Clark v. North Muskegon, 88/308; Racho v. Detroit, 90/92; Face v. Ionia, 90/104; Frary v. Allen Twp., 91/666; Fuller v. Jackson, 92/197; Detweiler v. Lansing, 95/484; Bigelow v. Kalamazoo, 97/121; LaDuke v. Exeter Twp., 97/450; Dittich v. Detroit, 98/245; Reed v. Detroit, 99/204; Hembling v. Grand Rapids, 99/293; Lincoln v. Detroit, 101/245; Roberts v. Detroit, 102/64; Williams v. Petoskey, 108/260; Will v. Mendon, 108/251; Shietart v. Detroit, 108/309; Walker v. Ann Arbor, 111/1; Baker v. Grand Rapids, 111/447; Holtham v. Detroit, 136/17; McEvoy v. Sault Ste. Marie, 136/172; Beaudin v. Bay City, 136/333; McCarthy v. Munising Village, 136/622; Beattie v. City of Detroit, 137/319; Oesterreich v. Detroit, 137/415; Hendershott v. Grand Rapids, 142/140.

MUNICIPAL LIABILITY: There can be no question of the power of the legislature to make the municipalities liable for such injuries, independent of any question of where the duty to keep in repair is located, or upon whom it is imposed.—Burnham v. Byron Twp., 46/558. Municipal liability is the same, so far as concerns innocent persons, whether the condition of the way is due to wear and decay or to the misconduct of individuals in tearing it up.—Dotton v. Albion, 50/132. The liability of a city is expressly declared by the statute and it is immaterial whether, under the provisions of its charter, it would be held so liable or not.—Campbell v. Kalamazoo, 80/662. The liability extends to townships, cities and villages alike.—McKellar v. Detroit, 57/159; McArthur v. Saginaw, 58/361. To render a municipality liable there must be not only defects, but also fault in allowing them to exist.—Fulton I. & E. Works v. Kimball Twp., 52/148. A graded approach to a bridge is a part thereof, and must be kept in a reasonably safe condition.—Shaw v. Salline Twp., 113/342. Municipalities are not liable for accidents caused by natural accumulation of ice and snow upon its walks.—Wesley v. Detroit, 117/658; Newman v. Ann Arbor, 134/29; Corey v. Ann Arbor, 134/376; Id., 124/134. Municipal liability, see also Menard v. Bay City, 114/450; Griswold v. Ludington City, 116/401; Seeger v. Village of Hart, 160/134. A boy who is in fact traveling over a street in a proper manner, though such traveling includes play, is within the protection of the statute.—Beaudin v. Bay City, 136/333. A village is not liable for personal injuries caused by permitting horse racing on a street which was in proper condition and safe for travel.—McCarthy v. Munising Village, 136/622. Liability of city for injuries caused by negligence of contractor.—Thompson v. Bay City, 137/94; Wright v. Muskegon City, 140/215. A city is not liable for injuries to a person, received by a fall caused by his cane going through a crack between two planks with decayed edges, where the walk was in a reasonably safe condition for persons not using canes.—Harden v. Jackson City, 137/271. A city is not liable for injuries resulting

from the maintenance of a billboard by a property owner on a space between the street line and the building.—*Temby v. Ishpeming*, 140/146; *Temby v. Ishpeming*, 146/20. A traveler injured on a street properly paved and in good repair, by reason of his horse being frightened by city fireman flushing city's fire hydrants, cannot recover therefor against the city, on the theory that it did not keep the street in a condition reasonably safe for public travel.—*Brink v. Grand Rapids*, 144/472. A city cannot relieve itself by contract of its statutory liability to keep the streets reasonably safe for public travel.—*Barker v. Kalamazoo City*, 146/257. A municipal corporation is not liable for injuries sustained by a person using the sidewalk, caused by the falling of a dead limb from a tree in the highway.—*Miller v. City of Detroit*, 156/650. The legislature has power, by a local act, to limit the liability of a municipality for injuries sustained from defective streets or sidewalks to cases where a notice in writing of the defect shall have been served upon the Board of Public Works.—*Forsyth v. City of Saginaw*, 158/201. Under charter provisions placing the construction of sewers and drains under the superintendence of the street commissioner, the city is liable for the negligence of a plumber, who, in constructing, with the permission of the street commissioner, a sewer connection to a residence, left the trench in the street unlighted, so that plaintiff drove into the excavation and was injured.—*Bonneville v. City of Alpena*, 158/279. A grating which projects two inches or less above a sidewalk is not such a defect as to violate the duty of a municipality to keep its streets and walks in a condition of reasonable safety.—*Northrup v. City of Pontiac*, 159/250. Under the statute requiring municipalities to keep the streets reasonably safe and fit for public travel, the city cannot relieve itself of liability by turning a street over to a paving contractor.—*Hughes v. City of Detroit*, 161/283.

**CONTRIBUTORY NEGLIGENCE:** Liability of municipality when the plaintiff is charged with contributory negligence.—*Stebbins v. Keene*, 55/557; *McKeller v. Monitor Twp.*, 78/490. When careless and negligent driving contribute to the injury, there can be no recovery.—*Abernethy v. Van Buren Twp.*, 52/383; *McCool v. Grand Rapids*, 58/41; *Harris v. Clinton Twp.*, 64/453. While contributory negligence is not to be presumed from the knowledge of the existence of the defect, such knowledge enjoins upon a party a degree of care commensurate therewith.—*Dittrich v. Detroit*, 98/248. When a person walking along a country road in the dark steps into a hole for which he was on the lookout, his knowledge of the defect does not necessarily establish his negligence, but is only a fact for the jury to consider.—*Lowell v. Watertown Twp.*, 58/568; *Dundas v. Lansing*, 75/509; *Sias v. Reed City*, 103/314-15 and cases cited. Intoxication of plaintiff.—*Lincoln v. Detroit*, 101/245. On the subject of contributory negligence, consult also *Smith v. Jackson*, 106/136; *Strudgeon v. Sand Beach*, 107/496; *Bouga v. Weare Twp.*, 109/520; *Church v. Howard City*, 111/298; *Baker v. Grand Rapids*, 111/447; *Welsh v. Lansing*, 111/589; *Whoram v. Argentine Twp.*, 112/20; *Perkins v. Delaware Twp.*, 113/377; *Schwingschlegel v. Monroe*, 113/683; *Minkley v. Springwells Twp.*, 113/347; *Hunter v. Durand Village*, 137/53; *Oesterreich v. Detroit*, 137/415; *Barnes v. City of West Bay City*, 138/93; *Vander Velde v. Leroy Village*, 140/359; *Barker v. Kalamazoo City*, 146/257; *Lewis v. Marshall*, 146/389. *Scharman v. Bay Co. Bridge Commission*, 158/77. It is not negligence, as a matter of law, for a person who knows of the defective condition in a sidewalk to use the walk, exercising care commensurate with the danger.—*O'Connor v. City of Detroit*, 160/193.

**NOTICE:** Notice, of defects, to contractor is not notice to township.—*Moore v. Hazelton Twp.*, 118/425. Notice should be given townships.—*White v. Riley Twp.*, 121/413; *Pearl v. Benton Twp.*, 123/411. Notice of dangerous condition of bridges.—*Aben v. Ecorse Twp.*, 113/9; *Snyder v. Albion City*, 113/275; *Randall v. Southfield Twp.*, 116/501; *Pearl v. Benton Twp.*, 131/275. A township is bound to make a reasonable inspection of highway bridges maintained by it.—*Bettys v. Denver Twp.*, 115/228. Knowledge of a defective sidewalk by city clerk or patrolmen is not a notice to city.—*Corey v. Ann Arbor*, 134/376. Actual notice of an obstruction in a street to the city superintendent of streets is notice to the city.—*McEvoy v. Sault Ste. Marie*, 136/173; *Weltzel v. Fowler Village*, 143/700. Duty of officials to inspect.—*Hunter v. Ithaca Village*, 141/539. See *Hendershott v. Grand Rapids*, 142/140; *Ness v. Escanaba*, 142/404. Evidence that officers of a township, including the highway commissioner, had been notified of the defective condition of the bridge, and that the condition existed several months, tends to show actual and constructive notice.—*Hunter v. Dwight Twp.*, 157/634. The notice to a municipal corporation is not a pleading, and need not charge negligence.—*Knudsen v. City of Muskegon*, 158/185. See *Forsyth v. City of Saginaw*, 158/201; *Hughes v. City of Detroit*, 161/283.

**HIGHWAYS:** Reasonable care in the construction of highways for ordinary vehicles, such as wagons and carriages, is the duty resting upon townships under the existing statute, and in the absence of further legislation, the courts will not extend the duty so as to require highways to be kept safe for bicycles and similar vehicles.—*Leslie v. Grand Rapids*, 120/28.

**OPEN TO PUBLIC USE:** It is not sufficient under this statute that it be a public highway or street, but it must be opened to the public for use.—*Clark v. North Muskegon*, 88/309.

**BODILY INJURY:** This section limits the liability to cases of bodily injury.—*Roberts v. Detroit*, 102/66.



**ALLEY:** A public alley is not a public highway or street, within the meaning of this act, and there is no law, either statutory or common, in this State making it the duty of a city to keep its alleys in good or reasonable repair, or reasonably fit for public travel.—*Face v. Ionia*, 90/104.

**STATE ROADS:** State roads having been placed in 1838 under the control, care and supervision of the highway commissioners in the several townships, such officers are in duty bound to keep them in good repair and safe repair and, failing in this, the township is liable.—*Bridge Co. v. Jasper Twp.*, 68/449; *Sharp v. Evergreen Twp.*, 67/447; *Delta Lumber Co. v. Wayne Co. Auditors*, 71/576.

**SUNDAY TRAVEL:** A person has the right to travel on a public highway on Sunday for any lawful purpose and can recover damages resulting from a defective highway the same as if received on a week day.—*Sharp v. Evergreen Twp.*, 67/443.

**CHARTER PROVISIONS:** The provision of a charter, exempting a city from liability for damages occasioned by obstructions on its sidewalks, is not valid as class legislation.—*MacLain v. Marquette City*, 148/481.

Damages for injuries to animals or other property.

Proviso.

(291) SEC. 2. If any horse or other animal, or any cart, carriage or vehicle, or other property, shall receive any injury or damage by reason of neglect by any township, village, city or corporation to keep in repair any public highway, street, bridge, sidewalk, crosswalk or culvert, the township, village, city or corporation whose duty it is to keep such public highway, street, bridge, sidewalk, crosswalk or culvert in repair shall be liable to and shall pay the owner thereof just damages, which may be recovered in an action of trespass on the case before any court of competent jurisdiction: Provided, That in all actions brought under this act it must be shown that such township, village or city has had reasonable time and opportunity after knowledge by or notice to such township, village or city that such highways, streets, bridges, sidewalks, crosswalks, or culverts has become unsafe, or unfit for travel, to put the same in the proper condition for use, and has not used reasonable diligence therein after such knowledge or notice.

**REASONABLE TIME, ETC.:** The liability does not apply until after the municipality has had reasonable time and opportunity to put the way in proper condition.—*McKellar v. Detroit*, 57/159; *Woodbury v. Owosso*, 64/239. As to reasonable time, see *Smith v. Sherwood Twp.*, 62/159; *Dittrich v. Detroit*, 98/245; *Hunter v. Durand Vill.*, 137/53.

**NOTICE, ETC.:** To render a municipality liable, its officers must have had knowledge or notice of the defects.—*Fulton I. & E. Works v. Kimball Twp.*, 52/148; *Woodbury v. Owosso*, 64/239; *Burleson v. Reading*, 110/512. Former acts would seem to have made a municipality liable without regard to the question of notice, but the act has always been construed by this court, that it was liable only in case of negligence, and it could not be held negligent, until after notice, actual or constructive; and later legislation was evidently framed to meet this view.—*Moore v. Kenockee Twp.*, 75/341. Actual notice is not necessary.—*Dotton v. Albion*, 50/132; *Campbell v. Kalamazoo*, 80/656. But in the absence of actual notice municipalities are liable only for such defects in sidewalks as are apparent, or are suggested by appearances, or which are disclosed by a test in the nature of the ordinary use of such walks.—*Hembling v. Grand Rapids*, 99/294-5. The individual knowledge of officers or agents of a municipal corporation, who in such capacity have powers or duties conferred upon them with reference to a given matter is the knowledge of the corporation, and notice to them is notice to the corporation.—*Dundas v. Lansing*, 75/499. The word "notice" is not synonymous with "knowledge." Whatever fairly puts a party upon inquiry is sufficient notice, where the means of knowledge are at hand, and, if a party omits to inquire, he is then chargeable with all he might have ascertained.—*Moore v. Kenockee Twp.*, 75/341. Want of knowledge may sometimes imply a want of due care; as where township officers, whose duty it is to keep bridges in a safe condition, do not know of defects which an examination would readily disclose.—*Medina Twp. v. Perkins*, 48/71-2; *Stebbins v. Keene Twp.*, 55/555; *Woodbury v. Owosso*, 64/239. See also *Moon v. Ionia*, 81/645. Notice may be presumed from a state of facts with which ignorance is incompatible unless failure to exercise reasonable care is assumed.—*Dotton v. Albion*, 50/132. See also, on the question of notice, *Tice v. Bay City*, 84/461; *Dittrich v. Detroit*, 98/245; *Smith v. Sherwood*

**§ 106.** The knowledge or notice which the statute requires is that of a particular defect complained of, and not knowledge or notice of other defects. *Thomas v. Lansing*, 75/507. As to notice, consult, also, *Strudgeon v. Lansing*, 107/496; *Will v. Mendon*, 108/251; *Moore v. Kalamazoo*, 110/212; *Aben v. Ecorse Twp.*, 113/9; *Mallick v. Corunna*, 110/212; *Aben v. Ecorse Twp.*, 113/9; *Ellisdale*, 113/44; *Snyder v. Albion*, 113/275; *Randall v. Southfield*, 116/501; *Smith v. Walker Twp.*, 117/14; *Rodda v. Detroit*, 118/423; *Pearl v. Benton Twp.*, 123/10; *Corey v. Ann Arbor*, 123/10; *Thomas v. Flint City*, 123/10; *Corey v. Ann Arbor*, 123/10; *Thomas v. Flint City*, 123/10; *Corey v. Ann Arbor*, 123/10. Proof of notice.—*Cavanagh v. Riverside Twp.*, 130/660. See *Macnaba*, 142/404. Notice of claim.—*Williams v. Lansing City*,

**SEC. 3.** It is hereby made the duty of townships, cities, or corporations to keep in reasonable repair, they shall be reasonably safe and convenient for public use, all public highways, streets, bridges, sidewalks, culverts, and culverts that are within their jurisdiction, and which are open to public use, and when the means now provided by law are not sufficient, or when the electors shall not have provided sufficient funds by vote at the annual meeting to enable any village or city to keep its public highways, streets, sidewalks, cross-walks and culverts in reasonable condition, and in a condition reasonably safe and fit for public use, each township, village or city is hereby authorized to levy an additional sum upon the taxable property of such village or city, not exceeding five mills on the dollar, for one year, as will enable such township, village or city to keep its public highways, streets, bridges, sidewalks, culverts, and culverts in good repair at all times. Highway commissioners, together with the township board, and officers having special charge of highways, streets, sidewalks, cross-walks, and culverts, and the care or management thereof, are hereby made and declared to be the officers of the township, village, city, or corporation wherein elected or appointed, and shall be subject to the direction of such township, village, city or corporate body in the discharge of their several duties.

Municipalities, etc., to keep walks, bridges, etc., in repair.

Additional tax for repairs.

Highway officers declared officers of township.

**REASONABLE REPAIR:** The later enactments substituted "reasonable" and indicated a purpose to prevent any responsibility for more than reasonable care requires.—*McArthur v. Saginaw*, 58/360. *v. Detroit*, 105/484; *Phalen v. Detroit*, 126/685. The duty to keep highways, streets and sidewalks in reasonable repair, refers only to the way, and does not impose upon a city an obligation to trim trees between the sidewalk and curb in a public street.—*Miller v. City of Detroit*, 6/630.

**ROAD FIT FOR TRAVEL:** The statute makes a city liable not only for damage occurring through neglect to keep the streets in repair, but also for damage occurring by reason of the neglect of the city to keep its streets in a reasonably safe and fit for travel; and if, in so doing, it becomes necessary to place signals or other safeguards at certain points, or give other notice, the city must see that it is done or the street closed for travel.—*Malloy v. Detroit*, 74/458; *Malloy v. Walker Twp.*, 77/460. This to the public travel extends also to members of a city fire department; the city is liable in damages to one who is injured on account of being out of repair.—*Coots v. Detroit*, 75/628. The statute is to make a road reasonably safe, and whether it is so safe and fit for travel is a question for the jury.—*Malloy v. Walker Twp.*, 77/462. The statute does not require streets and highways to be kept absolutely safe.—*Clinton Twp.*, 64/447; *Woodbury v. Owosso*, 64/245; *Shippey v. Detroit*, 65/501; *Bigelow v. Kalamazoo*, 97/124; *Welsh v. Detroit*, 97/124. The safety required by the statute is secured to travelers as well as by day, and the dangers surrounding the traveler in the darkness are conditions that should be taken into consideration by the

authorities whose duty it is to construct and keep in repair the roadway.—Sebert v. Alpena, 78/167. On the question of what is, or is not "reasonably safe," consult Schrader v. Pt. Huron, 106/173; Yotter v. Detroit, 107/4; White v. Riley, 113/295; Perkins v. Delaware Twp., 113/377; Minkley v. Springwells Twp., 113/347; Shaw v. Salline Twp., 113/342. Where streets are undergoing repair.—Beattie v. Detroit, 137/319. It is the duty of a municipality to keep its streets reasonably safe and fit for travel, and it is not relieved of that duty because the street is made unsafe by the act of third persons.—Davis v. Adrian City, 147/301. Extra assessments.—Diamond Match Co. v. Ontonagon, 140/185.

**DEGREE OF CARE:** Municipalities must exercise, through their officers, a reasonable supervision over its ways and bridges, and, within fairly practicable limits, to be watchful of their condition and safety.—Medina Twp. v. Perkins, 48/71-2; Dotton v. Albion, 50/129. It is neglect which renders them liable.—Davis v. Jackson, 61/530; Moore v. Kenockee Twp., 75/332. Township and city officers are required to exercise only ordinary care and prudence and reasonable intelligence in performing their duty of supervising the condition of roads and bridges and keeping them in repair.—Medina Twp. v. Perkins, 48/72; Stebbins v. Keene Twp., 55/557; Woodbury v. Owosso, 64/239; Moore v. Kenockee Twp., 75/332. A great deal fairly depends on local usage in determining duties concerning highways in winter.—McKellar v. Detroit, 57/161. See McKormick v. West Bay City, 110/265.

**ROADWAY:** It is the roadway that the statute requires to be kept in a reasonably safe condition; and whether such way requires the use of the entire width of the street must depend entirely upon the necessities of travel in any given case, and of this the authorities of a township or city must taken notice at their peril.—Sebert v. Alpena, 78/168. It is the right of the municipality to determine what part of the highways shall be devoted to the uses of public travel and passage and what part for sidewalks, trees, gutters, etc.—McArthur v. Saginaw, 58/359. See Keyes v. Marcellus, 50/439. Where there is nothing upon the surface of a highway to give notice or knowledge that a hole was being eaten away underneath by water, a township is not chargeable with negligence, by a person breaking through and receiving an injury.—Wakeman v. St. Clair Twp., 91/17.

**BRIDGES:** When it is generally known that a bridge has become decrepit, or when it has stood so long that there is much suspicion of it, the officers of the township may not disregard the warning conveyed by these circumstances and think to excuse their neglect to take action on the ground of having had no actual notice of a dangerous infirmity.—Medina Twp. v. Perkins, 48/72; Campbell v. Kalamazoo, 80/661. But the law does not impose an impracticable rule of duty. Township officers are not expected to be experts, nor learned engineers, nor persons liberally instructed in mechanics, nor individuals equipped with the resources of experienced specialists, and nothing more can be demanded of them than reasonable intelligence and ordinary care and prudence.—Id. While it is necessary that every bridge constructed shall be made safe, as far as the uses for which it is designed are concerned, yet it does not follow that it must be adapted to all possible uses. Nor can it be expected that its designers will anticipate uses which have not been known and necessities not within ordinary experience.—Fulton I. & E. Works v. Kimball Twp., 52/150. But when a bridge is built upon a plan adapted to allow the passage of heavy weights, such as portable engines, the township is bound to keep it in such repair as is required of such a bridge (distinguishing from Fulton I. & E. Works v. Kimball Twp.).—Stebbins v. Keene Twp., 60/214. See further as to bridges, Blank v. Livonia, 79/1; McKeller v. Monitor Twp., 78/485; Scharman v. Bay Co. Bridge Commission, 158/77. Authority to repair.—Pearl v. Benton Twp., 136/697.

**SIDEWALKS:** Actionable defects.—Bennett v. St. Joseph City, 146/382. See Welton v. Crystal Twp., 152/486; McIntyre v. Kalamazoo, 154/301. Notice to street commissioner of a village of defects in a walk is notice to the village.—Weitzel v. Fowler Village, 143/700.

**CROSSWALKS:** The statute does not impose the duty upon a city to construct crosswalks, but to keep them in repair when once built.—Williams v. Grand Rapids, 59/51. If crosswalks are constructed in unincorporated villages and the public are thereby induced to use them, they become for such use parts of the traveled way, and the township must be held liable in case they are suffered to become unsafe and dangerous.—Frery v. Allen Twp., 91/669. A crosswalk, in order to fall within the protection of the statute, need not necessarily span the entire street.—Frery v. Allen Twp., 91/670. The construction of a crosswalk in accordance with the requirements of the locality, adopting the means usually adopted, and which are best adapted for the convenience of the public, cannot be said to be negligent construction. A crosswalk must be reasonably safe, in view of the purpose for which it is constructed, the necessary uses of the street and all the varying conditions.—Bigelow v. Kalamazoo, 97/123. Village authorities have the right to determine how their crosswalks shall be built.—Shippey v. Au Sable, 65/494.

**CARE AND CONTROL:** Highways or bridges within the limits of an incorporated village are not always under the care and control of the village authorities. (Quinlan v. Manistique, 85/22.) The words "under their care and control" must be held to be intended to exempt villages so situated from liability.—Frery v. Allen Twp., 91/669.

**DEFECTS:** Township officers must be on the watch for hidden defects in township bridges, and their neglect of reasonable and ordinary effective watch-

fulness will make the township liable for injuries resulting from such defects.—*Stebbins v. Keene Twp.*, 55/557. See *Carver v. D. & S. P. R. Co.*, 61/590; *Sebert v. Alpena*, 78/165.

**OBJECTS LEFT IN STREETS:** As to an injury to a horse from stepping on one of the several cobble stones scattered about the street, the supreme court was equally divided and the action of the circuit judge in taking the case from the jury was not disturbed.—*McCool v. Grand Rapids*, 58/41. See *Agnew v. Corunna*, 55/428; *McArthur v. Saginaw*, 58/361.

**SNOW AND ICE:** This act applies only to injuries that are due to a way's being out of repair and not to such as are caused by the mere accumulation of ice and snow.—*McKellar v. Detroit*, 57/158; *Hutchinson v. Ypsilanti*, 103/13; *Rolf v. Greenville*, 102/544; *Kannenburg v. Alpena*, 96/53. See *Canfield v. Railway Co.*, 78/356; *Black v. Manistee*, 107/60; *Gavett v. Jackson*, 109/408. See *Pringle v. Detroit*, 152/445.

**HOLE BESIDE ROAD:** A stump had been left beside a road leading from a village to the country and children had dug a hole near the stump. A woman in the dark started to go across lots and fell into the hole. Held that this was not a defect which the village authorities were bound to remedy, if they did not suppose the needs of public travel required it.—*Keyes v. Marcellus*, 50/439.

**WHEN MUST BE CLOSED:** The law was not meant to apply to highways in progress of construction or repair. A city while grading and paving a street must close to public travel that portion thereby rendered unfit or unsafe, in order to suspend the duty imposed by statute to keep its streets which are open to public travel in good repair. And the same rule would apply to a highway or bridge in the country.—*Southwell v. Detroit*, 74/438. See *Joslyn v. Detroit*, 74/460. See *Beattie v. Detroit*, 137/319.

**PLAN OF CONSTRUCTION:** Municipalities have the right to determine for themselves the plan and manner of constructing their streets, bridges, crosswalks, etc., and will not be liable merely because the plan is defective or not so good as some other might be.—*Shippey v. Au Sable*, 65/500; *Williams v. Grand Rapids*, 59/51; *Davis v. Jackson*, 61/500; *Fulton I. & E. Works v. Kimball Twp.*, 52/150. But this statute cannot be given a construction that would relieve a municipality from liability by saying that it had adopted a method of construction and had built according to that plan. A municipality cannot construct a road, not safe and convenient for public travel, and shield itself behind its legislative power to adopt a plan and method of building.—*Malloy v. Walker*, 77/462; *Bigelow v. Kalamazoo*, 97/127. See also, *Sebert v. Alpena*, 78/165; *Barron v. Detroit*, 94/601.

(293) SEC. 4. The provisions of this act shall not apply to public highways which have not been in use ten years; but nothing in this section shall be construed as exempting townships, villages and cities from maintaining their streets, bridges, sidewalks, cross-walks and culverts, and the approaches to bridges in a safe condition for public travel.

Act not to apply to certain highways.

**TEN YEARS:** The first clause withholds the remedy as to all public highways which have not been in use ten years.—*McKellar v. Monitor Twp.*, 78/491. This same principle was applied in the case of a village street.—*Clark v. North Muskegon*, 88/309. See also *Gage v. Pittsfield Twp.*, 120/436. But later it was held that this provision applies only to public highways in townships; and, as to sidewalks, a city is bound to keep them in safe condition for public travel from the time they are built and opened for travel.—*Fuller v. Mayor, etc.*, 92/199. See *Schelske v. Orange Twp.*, 147/135.

(294) SEC. 5. No township, village or city in this State shall be liable in damages, or otherwise, to any person or persons for bodily injury, or for injury to any property sustained upon any of the public highways, streets, bridges, sidewalks, crosswalks or culverts, in such townships, villages or cities, except under and according to the provisions of this act, and the common law liability of townships, villages and cities of this State, for or on account of bodily injuries sustained by any person by reason of neglect to keep in repair public highways, streets, bridges, sidewalks, cross-walks or culverts, is hereby abrogated.

Liability of municipality under act.

Common law liability abrogated.

**COMMON LAW LIABILITY:** The supreme court of this State held that there was no common law liability, but the federal courts have held other-

wise. This section was aimed at the holding of the federal courts, which enabled a non-resident to recover, while an inhabitant of this State had no remedy.—*Racho v. Detroit*, 90/96; *Face v. Ionia*, 90/108. See also *Roberts v. Detroit*, 102/64; *Forsyth v. Saginaw*, 158/201.

## CHAPTER XXIII.

### LAW OF THE ROAD.

Drive to the right.

(295) SECTION 1. Whenever any persons shall meet each other on any bridge or road, traveling with carriages, wagons, carts, sleds, sleighs, or other vehicles, each person shall seasonably drive his carriage or other vehicle to the right of the middle of the traveled part of such bridge or road, so that the respective carriages, or other vehicles aforesaid, may pass each other without interference.

USE OF HIGHWAY: A highway is for the use of the general public for passage and traffic, and the restrictions upon its use are such only as are required to secure to the public the largest practical benefits from its use.—*Macomber v. Nichols*, 34/212. And the use of them with horses, steam engines and other methods of transit is permissible if not inconsistent with present methods.—*Id.* And they must be used with regard to their lawful use by others.—*People's Ice Co. v. The Excelsior*, 44/229; *Burford v. Grand Rapids*, 53/98. Those using them for passage and travel have the first right; and their use must not be obstructed if it can be avoided.—*Id.* The "traveled part of the road" means that part which is wrought for traveling, and is not confined simply to the most traveled wheel track.—*Daniels v. Clegg*, 28/33. The rights of travelers on a public highway are mutual and co-ordinate, and it is the duty of each to so use his right of passage as not to cause injury or detriment to another having a like right.—*Pigott v. Engle*, 60/221.

KEEP TO THE RIGHT: In the use of a public highway one has a right to expect from others ordinary prudence and to rely upon that in determining his own means of using the road: he may travel upon any portion of it except when he is about to meet and to pass another vehicle, when he must seasonably turn to the right of the middle of the traveled part of the road.—*Daniels v. Clegg*, 28/32. Where a jury finds that a party was traveling in a beaten track there can be no finding that he was on the wrong side of the road.—*Joslin v. LeBaron*, 44/160.

FAST DRIVING: *Potter v. Moran*, 61/61. Fast driving an ambulance upon a public street.—*People v. Little*, 86/125. Negligent driving.—*Hill v. Snyder*, 44/318; *Joslin v. Grand Rapids Ice and Coal Co.*, 53/322; *Williams v. Edmunds*, 75/92; *Post v. U. S. Express Co.*, 76/574; *Bolck v. Bissell*, 80/261; *Lazell v. Kapp*, 83/39; *Tyler v. Nelson*, 109/37.

Penalty.

(296) SEC. 2. Every person offending against the provisions of the preceding section, shall, for each offense, forfeit a sum not exceeding twenty dollars, and shall also be liable to the party injured for all damages sustained by reason of such offense: Provided, That proceedings shall be commenced for the recovery of such forfeiture within three months after the offense shall have been committed, and any action for such damages shall be commenced within one year after the cause of action shall have accrued.

Proviso, suits for recovery.

Unlawful to employ driver addicted to drink.

(297) SEC. 3. No person owning, or having the direction or control of any coach, or other carriage or vehicle running or traveling upon any road in this State, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such coach, carriage, or other vehicle, who is addicted to the use of intoxicating liquors; and if any such person shall violate the provisions of this section, he shall forfeit at the rate of five dollars per day for all the

time during which he shall have kept such driver in such employment.

(298) SEC. 4. If any driver, while actually employed in driving such coach, carriage, or vehicle, shall be guilty of intoxication, it shall be the duty of the owner or person having charge or control of such coach, carriage, or other vehicle, on receiving written notice of the fact, signed by any passenger who witnessed the same, and certified by him under oath, forthwith to discharge such driver from such employment; and every person who shall retain, or have in such service, within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for all the time during which he shall keep any such driver in such employment after receiving such notice.

Owner to discharge driver.

(299) SEC. 5. No person driving any carriage or vehicle for the conveyance of passengers for hire upon any road or highway in this State, with or without passengers therein, shall run his horses, or cause or permit them to run, upon any occasion, or for any purpose whatever; and every person who shall offend against the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or both, at the discretion of the court.

Penalty for running horses.

(300) SEC. 6. It shall not be lawful for the driver of any carriage used for the conveyance of passengers for hire, to leave the horses attached thereto, while any passenger remains in or upon the same, without making such horses fast with a sufficient halter, rope or chain, or without some suitable person to take the charge and guidance of them, so as to prevent their running, and if any driver shall violate the provisions of this section, he shall forfeit a sum not exceeding twenty dollars; but no prosecution shall be commenced therefor after the expiration of three months from the time of committing the offense.

Penalty for not fastening horses.

(301) SEC. 7. The owners of every carriage running or traveling upon any turnpike road or public highway, for the conveyance of passengers for hire, shall be liable jointly and severally, to the party injured, in all cases, for all injuries and damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person, or to the property of any person, whether the act occasioning such injury or damage be wilful, negligent or otherwise, in the same manner as such driver would be liable.

Liability of owners.

(302) SEC. 8. The overseers of highways, and the highway commissioners of the several townships in this State shall be fence viewers in their respective townships: Provided, That if in any case there shall not be at least two disinterested fence viewers, either of the two justices of the

Fence viewers.

Proviso.

peace not members of the township board, or both if necessary, shall act as fence viewers whenever required.

Compensation,  
by whom  
paid, etc.

(303) SEC. 9. Each fence viewer shall be paid by the person employing him at the rate of two dollars a day for the time he shall be so employed; and if such person shall neglect to pay the same within thirty days after the service shall have been performed, each fence viewer having performed any such service may recover in an action of assumpsit double the amount of such fees.

## CHAPTER XXIV.

### NOXIOUS WEEDS.

Duties of com-  
missioner and  
overseer.

(304) SECTION 1. It shall be the duty of the highway commissioner and the overseer of highways in each road district to see that the provisions of this act are carried out within the limits of his road district. Any highway commissioner or overseer who shall refuse or neglect to perform the duties required by this act shall be deemed guilty of a misdemeanor and upon conviction thereof in a court of competent jurisdiction shall be punished by a fine of not less than ten dollars nor more than twenty-five dollars, together with the costs of prosecution, or by imprisonment in the county jail for a period not exceeding thirty days, or by both such fine and imprisonment in the discretion of the court.

To cut brush.

(305) SEC. 2. It shall be the duty of the overseer and commissioner of highways to cut or cause to be cut, prior to the first day of July in each year, all brush within the limits of any highway passing by or through such lands: Provided, however, That this section shall in nowise apply to young trees which have been set out or preserved by abutting property owners for shade or other purposes.

Proviso.

Owners to cut  
thistles, milk  
weed, etc.

(306) SEC. 3. It shall be the duty of every owner, possessor or occupier of land or of every person or persons, firm or corporation having charge of any lands in this State to cut or cause to be cut down and destroyed all Canada thistles, milkweed (*asclepias cornutus*), wild carrots, oxeye daisies, or other noxious weeds growing thereon, or on any highway passing by or through such land, at least twice in each year, once before the first day of July and again before the first day of September, and as much oftener as may be necessary to prevent them going to seed, and if any owner, possessor or occupier of land, or any person or persons, firm or corporation having charge of any lands in this State shall, knowingly, suffer any Canada thistles, milkweed, wild carrots, or other noxious weeds to grow thereon, or on any highway passing by or through such land, or shall suffer the seed to ripen, so as to cause or endanger the spread thereof, he or they shall, on conviction in any court of competent jurisdic-

Penalty.

tion be liable to a fine of ten dollars, together with costs of prosecution, for every such offense and he or they shall pay the cost of cutting and destroying such weeds and an additional ten per centum as hereinafter provided.

(307) SEC. 4. It shall be the duty of the commissioner of highways in each road district to give general notice in the following manner to every owner, possessor or occupier of land and to every person or persons, firm or corporation having charge of any lands in this State, whereon noxious weeds are growing, or by or through which land a highway passes, to cut and destroy such noxious weeds: Four notices, each not less than two feet square shall be printed in clear readable type and posted one in each of four conspicuous places in the road district, and notices shall also be published in some local paper having a general circulation in the township. These notices shall set forth the fact that all noxious weeds must be cut on or before a certain date, which date shall be fixed by the commissioner. The posting and publishing of such notices shall take place at least ten days prior to the date upon which the weeds must be cut, and such notice may read as follows:

Commissioner  
to give notice  
to destroy  
weeds.

Posting of  
notices.

Notices, what  
to set forth.

To owners, possessors or occupiers of land, or any person or persons, firm or corporation having charge of any lands in this State:

Notice is hereby given that all noxious weeds growing on any land in the township of ..... county of ..... or within the limits of any highway passing by or through such lands must be cut down and destroyed on or before the ..... day of ..... A. D. nineteen hundred .....

Failure to comply with this notice on or before the date mentioned or within ten days thereafter shall make the parties so failing liable for the costs of cutting same and an additional levy of ten per centum of such cost, to be levied and collected against the property in the same manner as other taxes are levied and collected.

Dated.....

.....  
Commissioner of Highways of the Township of.....  
County of.....

(308) SEC. 5. In case the owner, possessor or occupier of land or the person or persons, firm or corporation having charge of any land shall refuse or neglect to comply with such notice and to cut the weeds or brush on or before the date stated in such notice or within ten days thereafter, it shall be the duty of the highway commissioner and overseer of highways, or some one whom said overseer may employ to assist in carrying on the work, to enter upon the land and to cause all such noxious weeds to be cut down with as little damage to growing crops as may be, and he shall not be liable to be sued in any action of trespass therefor.

Commissioner  
to enter land  
and destroy  
weeds.



Account of  
expenses in-  
curred.

(309) SEC. 6. Highway commissioners and overseers of highways shall keep an accurate account of the expenses incurred by them in carrying out the provisions of section five of this chapter, with respect to each parcel of land entered upon therefor, and with respect to weeds and brush cut from any highway passing by or through such parcel of land, and shall make a sworn statement of such account and present same to the township board of the township in which the expense was incurred. The township board is hereby authorized and required to audit and allow such account and order the same to be paid from the fund for general township purposes of said township out of any moneys in the township treasury not otherwise appropriated.

Audit of  
account.

Levy of ex-  
penditures on  
lands.

(310) SEC. 7. The supervisor of the township shall add to all such expenditures as have been so audited and allowed ten per centum of the amount of such expenditures and shall cause all such expenditures, together with the additional ten per centum, to be severally levied on the lands on which such expenditures were made, and the same shall become a lien upon said land and shall be collected in the same manner as other township taxes are collected; the same when collected shall be paid into the general township fund to reimburse the outlay therefrom aforesaid.

Destruction  
of weeds on  
public lands.

(311) SEC. 8. It shall be the duty of the highway commissioner and overseer of highways to cut all noxious weeds on State lands, school land and so forth and all brush and noxious weeds on highways passing by or through the same and the cost of same shall be allowed by the township board and paid by the township treasurer of the township in which such land is located.

Railroad, etc.,  
to destroy  
weeds.

(312) SEC. 9. All railroad corporations or gravel or plank road companies doing business in this State shall, each year, between the fifteenth day of June and the first day of July, and again between the tenth day of August and the first day of September, and at any time during the year so often as shall be sufficient to prevent Canada thistles, milkweed, wild carrots, oxeye daisies, or other noxious weeds going to seed, cause all Canada thistles, milkweed, wild carrots or other noxious weeds growing upon lands occupied by them in any city, village or organized township in this State to be cut down and destroyed. In case any railroad company or gravel or plank road company shall refuse or neglect to comply with the requirements specified in the second section of this chapter, then it shall be lawful for said overseer of highways to cut and destroy said Canada thistles, milkweed, wild carrots, or other noxious weeds between the first day and the fifth day of July, inclusive, and between the first and fifth days of September, inclusive, in each year or so often as shall be sufficient to prevent said Canada thistles, milkweed, wild carrots, or other noxious weed going to seed to endanger the spread thereof, at the expense of the cor-

When overseer  
to destroy  
weeds.

poration on whose lands said Canada thistles, milkweed, wild carrots, or other noxious weeds shall be so cut, at the rate of three dollars per day for the time necessarily occupied in cutting and destroying, to be recovered in any court of competent jurisdiction in this State. Compensation.

(313) SEC. 10. It shall be the duty of the prosecuting attorney of the county to prosecute all violations of the provisions of this act which shall come to his knowledge. Duty of prosecutor.

Sec. 11 repeals inconsistent and contravening acts.

#### USE OF STEAM ENGINES ON HIGHWAYS.

An Act to regulate the use of steam engines, steam wagons or other vehicles, which are in whole or in part operated by steam, on the public highways of this State, and to prohibit the blowing of steam whistles upon the public highways of this State.

[P. A. 1887, Act 145.]

#### *The People of the State of Michigan enact:*

(314) § 5543. SECTION 1. It shall be unlawful for any person, company or corporation owning or controlling any carriage, vehicle, traction or other engine propelled by steam, by themselves, their servant, agent or employe, to allow the same to stand upon any bridge or culvert in any highway for taking a supply of water, or other purpose; and it shall also be unlawful to permit or use the same to pass over, through or upon any public highway, road or street, unless such owner, owners, agent, servant or employe shall send before the same a person of mature age, at least ten rods and not more than forty rods in advance except that incorporated cities and villages such persons shall be not less than four rods and not more than ten rods in advance, to notify and warn persons traveling or using said highway, road or street with horses or other domestic animals, of the approach of such carriage, vehicle or engine. And upon the approach of any person or persons with horse or horses, or other domestic animals, from behind or in front, said owner or owners, agent, servant, or employe of such steam vehicle, carriage or engine having the same in charge, shall cause the same to be stopped, and the steam of such engine to be immediately shut off, and to render such assistance as will enable such team or teams of horses, or other domestic animals to pass in safety; and at night such persons shall carry a red light; and such persons shall carry and use plank sufficient to plank all crosswalks: Provided, That the provisions of this act shall not be construed to apply to automobiles: Provided further, That no township shall be liable for any damages sustained

Unlawful to stand on bridge.

To send person ahead.

When to stop.

Proviso. Further proviso.

by the breakage of any bridge or culvert by any steam engine or steam vehicle weighing more than six tons.

Am. 1899, Act 217; 1903, Act 71.

USE OF STEAM ENGINES: Persons making use of horses by means of travel or traffic by the highways have no rights therein superior to those who make use of the ways in other permissible modes.—*Macomber v. Nichols*, 34/213. If one in making use of horses as a means of locomotion on the highway is injured by the act or omission of another using a steam locomotive, the question is not one of superior privilege, but whether, under all the circumstances, there is negligence imputed to some one, and if so, who should be accountable for it.—*Id.* In an action for an injury caused by a horse taking fright on a highway at an engine being propelled by steam it is error to permit the right of recovery to turn upon whether the engine was calculated to frighten horses of ordinary gentleness. The bringing of an unsightly object into the common highway is not necessarily wrong because of its tendency to frighten horses any more than the construction of a bridge over a river is a wrong because of its tendency to delay vessels.—*Id.*

LIABILITY: For liability of municipality for injuries received by person or engine by reason of defective bridge, etc.—*Stebbins v. Keene Township*, 55/552; *Woodbury v. Owosso*, 64/239.

TITLE OF ACT: By the term "regulate" in the title of this act, both government and restriction are intended.—*Westgate v. Adrian Twp.*, 161/333.

Blowing steam  
whistle on  
highway a  
misdemeanor.

(315) § 5544. SEC. 2. Any person or persons who, while traveling upon the public highways of this State with a steam engine, steam wagon or other vehicle which is, in whole or in part, being worked, run or operated by steam, or to which a steam whistle is attached, shall blow or sound, or cause to be blown or sounded, any steam whistle while so traveling upon the public highways of this State, shall be guilty of a misdemeanor.

Punishment  
for violation  
of act.

(316) § 5545. SEC. 3. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding fifteen days, or by both such fine and imprisonment, in the discretion of the court. Any person, company or corporation violating any of the provisions of this act shall also be liable for all damages sustained thereby by any person or persons traveling upon or using said highway with horses or other domestic animals, to be recovered in an action of trespass on the case.

Not to apply  
to railroads.

(317) § 5546. SEC. 4. This act shall not apply to railroads.

### COMPENSATION OF TOWNSHIP OFFICERS.

[Extract from Chap. 16, R. S. 1846.]

Township  
officers, com-  
pensation of.

(318) SEC. 95. The following township officers shall be entitled to compensation at the following rates for each day actually and necessarily devoted by them to the service of the township in the duties of their respective offices, to be verified by affidavit, whenever required by the township boards:

Boards, etc.

First, The officers composing the township boards, board of registration, board of health, inspectors of election, clerks

of the poll and commissioners of highways, three dollars per day, and at the same rate for parts of days;

Second, The supervisor for taking the assessment and for all services not connected with above boards, three dollars per day and at the same rate for parts of days; <sup>Supervisor.</sup>

Third, The township clerk, as clerk of the township board, three dollars per day and at the same rate for parts of days, <sup>Township clerk.</sup> but no township officer shall be entitled to pay for acting in more than one capacity at the same time.

Am. 1911, Act 260.

(319) SEC. 2. This act shall not take effect until ratified by the electors of said township. <sup>Ratification.</sup>

Am. Id.  
See Section 45.

#### **INTERSTATE BRIDGE CONSTRUCTION BY CITIES.**

An Act to authorize any city within this State, bordering upon any navigable stream which is the boundary line between this State and any other state, in conjunction with any city bordering upon said navigable stream in said other state, to construct and maintain bridges across said stream between said cities.

[Act 6, P. A. 1911.]

#### *The People of the State of Michigan enact:*

(320) SECTION 1. Any city within this State bordering upon any navigable stream which is the boundary line between this State and any other state, in conjunction with any city situated in said other state bordering upon said stream, is hereby authorized and empowered at the joint expenses of said cities to construct and maintain bridges and approaches thereto across said stream between said cities at such points as may be agreed upon by the common councils or other governing bodies of said cities, and to enter into contracts with the common council or governing body of the adjoining city of such other state for the construction, maintenance and repair of said bridges. <sup>Bridges, certain cities may build jointly.</sup>

See sections 131, 148.

(321) SEC. 2. Previous to the building of said bridges, highways leading thereto shall be laid out and opened so that access thereto may be had from the common traveled streets in said cities, and authority or permission to build such bridges from the owner or owners of the land to which said bridges shall be attached and over which same shall pass, shall be obtained. <sup>Highways opened.</sup>

Bonds,  
issue of.

Proviso.

Further  
proviso.

(322) SEC. 3. The common council or other governing body of the city is hereby authorized to borrow on the faith and credit of said city, such sums of money as may be necessary to carry out the purposes of this act, and to issue the bonds of said city therefor, payable at such time and at such rate of interest as the common council or other governing body of said city shall determine: Provided, however, That if the charter of any such city now in force provides any other method of raising such sums of money such method may be pursued: And Provided further, That the amount of bonds so issued shall not exceed in amount the limit now prescribed by law.

(323) SEC. 4. This act affects the public safety and shall take immediate effect after its passage by the legislature and signing by the governor.

This act is ordered to take immediate effect.

Approved March 7, 1911.

#### COUNTY TAXATION FOR BRIDGES, ETC.

An Act to authorize the board of supervisors of any county to raise by taxation or borrow money for the purpose of purchasing real estate for sites for, and constructing or repairing public buildings and bridges; to limit the amount that can be raised or borrowed for such purpose by such boards in certain cases; to authorize such boards to submit the question of raising or borrowing money for such purposes to the electors of their certain counties; to provide for the manner of submission; and to repeal act number forty-one of the public acts of nineteen hundred nine, entitled "An act limiting the amount which may be raised in any county in any one year by the board of supervisors," approved April twenty-first, nineteen hundred nine.

[Act 28, P. A. 1911.]

#### *The People of the State of Michigan enact:*

Public  
buildings,  
etc., tax levy  
limit.

Referendum.

When  
submitted.

(324) SECTION 1. The board of supervisors of any county may in any one year levy a tax of one-tenth of one mill on the assessed valuation of said county for purchase of real estate for sites for, and the construction or repair of public buildings or bridges, or may borrow an equivalent sum for such purpose; and in any county where the assessed valuation is less than ten million dollars, the board may levy a tax or borrow for such purpose to the amount of one thousand dollars, but no greater sum shall be raised for such purpose in any county in any one year unless submitted to the electors of the county and approved by a majority of those voting thereon in the manner provided in this act.

(325) SEC. 2. Whenever the board of supervisors of any county shall by resolution vote in favor of levying a tax or

borrowing money in excess of the amounts prescribed in section one of this act, the question of levying or borrowing such sum shall be submitted to the electors of the county at the general November election, or the biennial spring election, or at an election to be held on the first Monday in April subsequent to the passage of such resolution by the board of supervisors. A copy of such resolution shall be served upon the sheriff of the county by the county clerk. It shall be the duty of the sheriff at least twenty days prior to the date of the election, at which such question shall be submitted to the electors, to cause to be delivered to the township clerk in each township, and to the chairman of the board of election inspectors in each ward in any city in his county, a notice in writing that at such election there will be submitted to the electors of such county the question of raising the amount prescribed in the resolution passed by the board of supervisors, and cause the same to be published in one or more newspapers printed and circulating in said county, if one be printed and circulated therein, at least two consecutive weeks before said election. Sheriff to give notice.

(326) SEC. 3. It shall be the duty of the township clerk or chairman of the board of election inspectors, upon receipt of the notice herein required, to give notice in writing under his hand of the time and place when such question will be submitted to the electors. Such township clerk or chairman of the board of election inspectors shall cause such notice to be posted up in at least five of the most public places in the said township or ward, at least ten days before said election. Township clerk to give notice. Posting.

(327) SEC. 4. It shall be the duty of the board of election commissioners of such county to prepare the necessary ballots for use of the electors in voting upon the question referred to in this act. The said question shall be printed upon a ballot separate and distinct from all other ballots, which ballot shall be in the following form: Ballots. Form.

#### INSTRUCTION TO VOTER.

Mark a cross in the square to the left of the word "Yes" or "No."

To authorize the board of supervisors to borrow \$. . . . .

[ ] Yes.

To authorize the board of supervisors to borrow \$. . . . .

[ ] No.

There shall be inserted in the above blank the amount set forth in the resolution of the board of supervisors. The ballots so prepared shall be distributed by the board of election commissioners within the same time and in the same manner that ballots are distributed prior to a general election. All ballots upon which an elector marks a cross in the square to the left of the word "Yes" shall be counted in favor of raising the amount stated in the resolution of the board of Distribution.

Canvass, etc. supervisors, and all ballots upon which an elector marks a cross in the square to the left of the word "No" shall be counted against the question of raising the amount set forth in the resolution of the board of supervisors. All ballots cast at any election on such question, shall be received, counted, canvassed and returned in the manner now governing for the election of county officers. If at any such election a majority of the electors voting on such question shall decide in favor of authorizing the board of supervisors to raise the amount set forth in said resolution, such amount may be borrowed in the same manner as the amounts referred to in section one of this act may be borrowed in the first instance.

Section 5 repeals Act No. 41, of the Public Acts of 1909.

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An Act to legalize all actions taken, all indebtedness existing, and all bonds and other evidences of indebtedness issued under act number forty-one of the public acts of nineteen hundred nine, entitled "An act limiting the amount which may be raised by any county in any one year by the board of supervisors."

[Act 30, P. A. 1911.]

*The People of the State of Michigan enact:*

Supervisors,  
certain acts of,  
legalized.

(328) SECTION 1. All acts of boards of supervisors heretofore taken under act number forty-one of the public acts of nineteen hundred nine, entitled "An act limiting the amount which may be raised by any county in any one year by the board of supervisors," in raising or borrowing money and in submitting any question of raising or borrowing money to the electors of their respective counties, all elections held under the provisions of said act, and all tax levies made, all indebtedness incurred, all bonds and other evidences of indebtedness authorized or issued under said act, are hereby legalized and made valid.

This act is ordered to take immediate effect.

Approved March 31, 1911.

**CONVICT LABOR UPON HIGHWAYS.**

An Act to provide for employing the convicts in the State reformatory at Ionia, the State prison at Jackson and the State house of correction and branch of the State prison in the Upper Peninsula at Marquette, upon the public roads and highways within any county in the State of Michigan.

[Act 181, P. A. 1911.]

*The People of the State of Michigan enact:*

(329) SECTION 1. Upon the written request of a majority of the board of county road commissioners in counties under the county road system, or upon the written request of the road commissioners in a township or district under the township or district road system, or upon the written request of a majority of the board of supervisors in counties not under the county road system, the boards of control of the State reformatory at Ionia, the State prison at Jackson or of the State house of correction and branch of the State prison in the Upper Peninsula at Marquette, may detail such able bodied convicts as in their reasonable discretion shall seem proper, not exceeding the number specified in said written request, to work upon such public roads and highways of such county, township or district as shall be designated in said written request of said county, township or district road commissioners or board of supervisors: <sup>Public roads, employment of convicts.</sup> Provided, That each application for allotment of convicts under the provisions of this act shall be accompanied by a bid-price per day for such labor, and allotments shall be made to the highest bidder: <sup>Proviso.</sup> Provided further, That such county, township or district shall pay to the warden of the prison from which such convicts are detailed a certain fixed amount of money per day for each man so detailed, which amount shall be decided upon by the boards of control of the three prisons mentioned in this act in joint session, such session to be held within sixty days after the passage of this act. The amount to be paid shall be a fair and just compensation for such labor and shall not be less than fifty cents per day per convict. <sup>Compensation for labor, etc.</sup> Such county, township or district shall also pay expenses of transportation to and from the county, township or district and shall provide or pay for the lodging and food of the convicts while employed by it and shall furnish all tools and materials necessary in the performance of said work. Said convicts thus employed upon the public roads and highways shall be under the care and custody of such officer or officers as the warden of the prison or reformatory from which they are detailed shall designate, and the expense of guarding if guards are necessary shall be borne by the State: <sup>Custody of convicts.</sup> Provided, That such convicts may be used in surface quarries and in <sup>Proviso.</sup>



- stone yards in preparing material to be used on said roads, and in hauling the same to the place of distribution: Provided further, That where two or more applications shall be on file they shall be filled pro rata. All moneys collected under the provisions of this section shall be turned over to the state treasurer and credited to the proper fund.
- Further proviso.
- Kinds of labor. (330) SEC. 2. Said convicts when employed under the provisions of section one of this act shall not be used for the purpose of building any bridge or structure of like character which requires the employment of skilled labor.
- Boards empowered to adopt rules. (331) SEC. 3. The boards of control of the prisons mentioned in this act are hereby empowered to adopt a special rule applicable solely to convicts employed on the public work herein authorized and contemplated, whereby convicts so employed shall be granted additional good time allowance, conditioned upon their good behavior and cheerful compliance with all the rules that may be made by said boards for the management and control of convicts so employed.

Section 4 repeals "All acts or parts of acts in conflict with the provisions of this act."

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For an act providing for the formation of corporations with power to acquire, control, own, maintain, improve and convey property for parks, playgrounds, drives and boulevards, and hold the same and the proceeds thereof in trust for municipalities and take private property therefor, see Act No. 161, Public Acts of 1911.

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# BLANK FORMS.

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## FORMS FOR THE USE OF COMMISSIONERS OF HIGHWAYS.

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[The references are to compiler's sections.]

### No. 1.

#### APPLICATION TO LAY OUT A HIGHWAY.

[Section 2.]

To the Commissioner of Highways of the Township of ....., County of .....

The undersigned freeholders of the said township of ....., do hereby make application to you to lay out a highway in a part of said township, not included within the corporate limits of any city or village, and respectfully ask that you will proceed to lay out a highway as follows: Commencing at (here insert a description of the route of the proposed highway).

Dated this ..... day of ....., A. D. 19..

(To be signed by seven freeholders of the township.)

---

### No. 2.

#### APPLICATION FOR DISCONTINUANCE OF HIGHWAY.

[Section 2.]

To the Commissioner of Highways of the Township of ....., County of .....

The undersigned, freeholders of said township of ....., hereby make application to you to discontinue the highway in said township running as follows: (describe the road to be discontinued) which said highway is not included within the corporate limits of any city or village.

Dated at ....., this ..... day of ....., A. D. 19..

(To be signed by seven freeholders of the township.)

NOTE.—If the application be to alter a highway, the above can be altered to suit the case; and the extent to which the route is proposed to be changed should be set forth in the application.

## No. 3.

## NOTICE TO OWNER OR OCCUPANT.

[Section 4.]

To Mr. ....:

Take notice, That application pursuant to law has been made to the undersigned commissioner of highways of the township of ....., by at least seven freeholders of said township, to lay out a highway in said township, to be run as follows: Commencing (here describe route of proposed highway) and which highway will pass through lands owned or occupied by you. You are therefore hereby notified that the undersigned commissioner of highways will meet at the house of B.. S., in said township, on the ..... day of ....., A. D. 19.., at .... o'clock ... M., to proceed to view the premises described in said application and notice, and ascertain and determine the necessity of laying out the highway above described, and to appraise the damages thereon.

Dated this ..... day of ....., A. D. 19..

.....  
Commissioner of Highways of the Township of .....

[This form with the necessary alterations may be used for altering or discontinuing a highway.]

NOTE.—This notice must be issued within five days after application is made, and served at least ten days before the day of meeting, on the owners or occupants of lands through which it is proposed to lay out, alter, or discontinue said road, either personally or by copy left at the residence of said owner or occupant, or, in case of non-resident owners, by posting up the same in three public places in the township ten days before the time of meeting, and may be served upon any railroad company by leaving a copy thereof with the agent in charge of any ticket or freight office of the company, on the line thereof.

## No. 4.

## AFFIDAVIT TO BE ATTACHED TO COPY OF NOTICE SHOWING SERVICE THEREOF.

[Section 5.]

STATE OF MICHIGAN, }  
County of..... } ss.

A B, being duly sworn, deposes and says, that he is commissioner of highways of the township of ....., in said county of ....., and that on the ..... day of ....., A. D. 19.., he served a notice for (laying out, altering, or discontinuing, as the case may be), a highway, a copy of which is hereto annexed, upon (give names of persons or companies) by (here state manner of service).

.....  
Commissioner of Highways of the Township of .....

Subscribed and sworn to before me, this ..... day of ....., A. D. 19..

.....  
Notary Public.

My commission expires .....

(Attach copy of notice.)

## No. 5.

RETURN MADE BY COMMISSIONER ON APPLICATION FOR LAYING OUT  
HIGHWAY.

[Section 7.]

Whereas, Application was made to the undersigned, commissioner of highways of the township of ....., by ..... (seven or more, as the case may be) freeholders of said township to lay out a highway as hereinafter described;

And Whereas, The said highway commissioner did give notice of the said application and of the time and place of hearing thereof, to the owners and occupants of lands through or adjoining which application was made for laying out the said highway, and like notice to the ..... railroad company, all of which notices were given ten days before the time appointed for the hearing, and affidavit of service was made in each case;

And Whereas, The said commissioner did on the ..... day of ....., A. D. 19.., being the day of hearing appointed in said notice, proceed to view the premises described in said application and notice, for the purpose of determining the necessity for laying out said highway and to determine the damages to be awarded therefor;

Now, therefore, It is hereby determined by said highway commissioner that the said highway as hereinafter described is necessary, said highway being described as follows: (give the description as in the application, and if a survey be made of the line of said highway add: according to a survey thereof which the undersigned commissioner has caused to be made of the line of said highway, filed in the office of township clerk).

And it is further determined, That damages are hereby awarded to the following named persons, being all the owners and occupants of lands through or adjoining which it is proposed to lay out the said highway, who have made a claim for damages, said award of damages being as follows:

To A B, owner of (give description) ..... dollars and ..... cents.

To C D, occupant of (give description) ..... dollars and ..... cents.

And it is further determined, That the highway as above described is hereby laid out and established.

Given under my hand this ..... day of ....., A. D. 19..

.....  
Commissioner of Highways of the Township of .....

## No. 6.

## RETURN OF COMMISSIONER DISCONTINUING A HIGHWAY.

[Section 7.]

The undersigned, commissioner of highways of the township of ....., in the county of ....., hereby makes return that upon the application made to him in pursuance of law, by seven or more freeholders of said township "to discontinue the highway known and described as follows: (describe highway), the said highway commissioner did, after due notice given according to law, proceed on the ..... day of ....., A. D. 19.., to view the premises described in said application and notice, and ascertain and determine the necessity for discontinuing said highway. And he doth further return that he considers and determines that said described highway shall be and the same is hereby discontinued, and that he does not find any damages sustained by said discontinuance."

Given under my hand this ..... day of ....., A. D. 19..

.....  
Commissioner of Highways of the Township of .....

NOTE.—If the application was for altering the route of a highway, the above return can be changed to correspond therewith. The return is to be filed in the township clerk's office, with the application and notice attached thereto.

## No. 7.

## ORDER OF COMMISSIONER LAYING OUT ROAD.

[Section 7.]

[The law does not seem to require this order, but it may be well to use it.]

COUNTY OF ....., } ss.  
 Township of ....., }

Application having been made to the undersigned, commissioner of highways of said township, by at least seven freholders therein, for laying out a highway as hereinafter described, and the said commissioner having pursuant to statute, ascertained and determined the necessity of taking the property required for such highway, and appraised the damages therefor, and having duly made return of his proceedings, and the same being filed in the office of the township clerk, the said commissioner doth hereby order and determine that a highway be and the same is hereby laid out and established as follows: (Here insert description of route, as in application and return.)

Given under my hand this ..... day of ....., A. D. 19..

.....  
 Commissioner of Highways of the Township of .....

[This form can be readily adapted to an order for altering or discontinuing a highway.]

## No. 8.

## APPEAL FROM DECISION OF COMMISSIONER TO TOWNSHIP BOARD.

[Sections 8 and 108.]

To the Township Board of the Township of ....., County of .....

I, M.. L., of the said township of ....., conceiving myself aggrieved by the determination of the commissioner of highways of said township of ....., in (laying out or refusing to discontinue) the following described highway: (here describe road), do hereby appeal to you from such determination. The grounds upon which this appeal is made are as follows: (state the grounds). This appeal is made to reverse the entire determination of said commissioner or to reverse that part of the determination of said commissioner: (Here specify the part sought to be reversed).

Dated this ..... day of ....., A. D. 19..

.....  
 [To be filed with the township clerk.]

NOTE.—In an appeal from the award of damages, the above may be altered so as to make it applicable.

## No. 9.

## NOTICE TO THE COMMISSIONER OF HIGHWAYS TO BE GIVEN BY TOWNSHIP CLERK IN CASE OF APPEAL.

[Section 8.]

To the Commissioner of Highways of the Township of ....., County of .....

Take notice, That M.. L. has appealed to the township board of township of ....., from your determination in (laying out or refusing to discontinue) the following highway: (here describe highway). The said township board will, on the ..... day of ....., A. D. 19.., at ten o'clock in the forenoon, proceed to

view the premises, and hear the appeal made by said M.. L.. from your determination.

Dated this ..... day of ....., A. D. 19..

.....  
Township Clerk.

The above may be altered so as to apply to an appeal from an award of damages.  
NOTE.—Allow for ten full days' service of this notice.

—  
No. 10.

NOTICE TO APPELLANT.

[Section 8.]

To M.. L.:

You will please take notice, That the township board of the township of ....., county, will, on the ..... day of ....., A. D. 19.., at ten o'clock in the forenoon, proceed to view the premises and hear the appeal made by you from the determination of the commissioner of highways of the said township of ..... in (laying out or refusing to discontinue) the following highway: (describe the highway).

Dated this ..... day of ....., A. D. 19..

.....  
Township Clerk.

This form may be altered to apply to an appeal from an award of damages.  
NOTE.—Allow for ten full days' service of this notice.

—  
No. 11.

DECISION OF TOWNSHIP BOARD ON APPEAL.

[Section 9.]

Whereas, M.. L., of ....., hath appealed to the township board of the township of ....., county of ....., from the determination of the commissioner of highways of said township, in the matter of the laying out (or discontinuance) of the following highway: (describe the highway); And Whereas, After due notice to the parties, pursuant to statute, we, the said township board, did proceed to view the premises, and hear the proofs and allegations of the parties; therefore, be it known, that we, the said township board, do consider and decide that the determination of said highway commissioner (laying out or discontinuing) said highway was proper, and is hereby confirmed (or that said determination was erroneous, and is hereby reversed).

Given under our hands, this ..... day of ....., A. D. 19..

.....  
.....  
.....  
Township Board.

[This is to be filed in the office of the township clerk.]

NOTE.—The above may be changed so as to make it applicable to a decision on an appeal from an award of damages.



## No. 12.

## NOTICE TO BE GIVEN TO COMMISSIONERS OF ADJOINING TOWNS.

[Section 11.]

To the Commissioner of Highways of the Township of .....

You are hereby notified that application, according to law, has been made to the undersigned, commissioner of highways of the township of ....., to (lay out, alter or discontinue) a highway upon the line between the said township of ..... and the said township of ....., described as follows: (Describe the highway.) And you are also notified that I have appointed the ..... day of ....., A. D. 19.., at .... o'clock in the forenoon, at the house of ....., to proceed and view the premises described in said application, as above set forth, and ascertain and determine the necessity of (laying out, etc.), such highway.

Given under my hand this ..... day of ....., A. D. 19.., at the township of ....., in the county of .....

.....  
Commissioner of Highways of the Township of .....

NOTE.—This notice should be served in the manner provided in Sec. 4.

## No. 13.

## AGREEMENT FOR LINE ROAD BETWEEN TOWNSHIP AND CITY OR VILLAGE.

[Section 13.]

Application having been made to the undersigned, A.. B., commissioner of highways of the township of ....., in the county of ....., by at least seven freeholders therein, for laying out a highway on the boundary line between said township of ....., and the city (or village) of ....., in said county, and having, pursuant to law, met with the undersigned C.. D., commissioner of highways (or other officer having authority to lay out streets), of the city (or village) of ....., in said county and having determined the necessity for taking property required for such line road, and appraised the damages therefor, the said commissioners do hereby order and determine that a line road between said township, and said city (or village) be, and the same is hereby laid out and established as follows: (here insert the description showing the portion of such line road to be in such township and the portion in such city or village). And we, the said commissioner of highways of the township of ....., and the said commissioner of highways (or other officer) of the said city (or village) of ....., pursuant to law, do hereby jointly agree that such highway, so laid out as above described, shall be a line road between said township of ....., and the city (or village) of ....., in said county, and do further determine and agree that the said line road shall be open and improved on or before the ..... day of ....., A. D. 19... And the said commissioners do further agree and determine that said township of ....., shall open, maintain, and improve that portion of said line road described as follows: (here set forth the portion of the road to be opened and improved by the township.) And that said city (or village) shall open, maintain, and improve that portion of said line road described as follows: (here set forth the portion to be opened, etc., by the city or village).

Given under our hands this ..... day of ....., A. D. 19..

.....  
Commissioner of Highways of the Township of .....

.....  
Commissioner of Highways of the City of .....

[This is to be recorded in the township, and city or village.]

## No. 14.

## NOTICE TO PARTY TO REMOVE FENCES.

[Section 19.]

To A.. P.:

Sir—The commissioner of highways of the township of ....., county of ....., having laid out and established, according to law, a public highway which runs through certain lands and premises, (owned or occupied) by you, which said lands and premises are described as follows: (describe them), and the damages for the taking of the same having been ascertained and (paid or tendered) to the owner or occupants thereof, you are hereby required to remove your fences from within the bounds of said highway, within ..... days after service upon you of this notice, or the said commissioner of highways will after the expiration of the said ..... days, proceed to enter upon said premises and remove the said fences.

Dated this ..... day of ....., A. D. 19..

.....  
Commissioner of Highways of the Township of .....

[The time of this notice must be not less than sixty days; nor in townships can party be required to move his fences between the first day of May and the first day of September.]

## No. 15.

## NOTICE TO RAILROAD COMPANY TO PROVIDE SUPERINTENDENT FOR CONSTRUCTION OF CROSSING.

[Section 28.]

Take notice, That a public highway has been duly established in the township of ....., county of ....., as follows: Commencing at (here describe the highway), which highway crosses the road of your company at (here state the place of crossing). Plans for such crossing have been furnished by the Railroad Commission, and the highway commissioner desires to commence the work of constructing such crossing on the ..... day of ..... at ..... o'clock A. M., 19... You are required to furnish a competent superintendent or trackman at the time above named to superintend the construction of such crossing in accordance with plans and specifications for such crossing as provided by the Railroad Commission of this State.

Given under my hand this ..... day of ....., A. D., 19..

.....  
Commissioner of Highways of the Township of .....  
To ..... (give name of company to be notified).

## No. 16.

## ANNUAL ACCOUNT OF THE COMMISSIONER OF HIGHWAYS TO THE TOWNSHIP BOARD.

[Section 33.]

To the Township Board of the Township of ....., County of .....

The following is the annual account of the Commissioner of Highways for the year ending the ..... day of April, 19..

## ROAD REPAIR TAX.

Amount received.....	\$.....
Amount expended for .....	\$.....
Amount expended for .....	\$.....
Amount expended for .....	\$.....
Outstanding liabilities .....	\$.....
Total .....	\$.....
Amount on hand .....	\$.....

## HIGHWAY IMPROVEMENT TAX.

Amount received.....	\$.....
Amount expended for .....	\$.....
Amount expended for .....	\$.....
Amount expended for .....	\$.....
Outstanding liabilities .....	\$.....
Total .....	\$.....
Amount on hand .....	\$.....
I have received from .....	

(Other sources from which received.)

the sum of \$ .....

The improvements which have been made on the roads and bridges in said township during the year are as follows: (state the improvements). The condition and situation of the roads and bridges of said township are as follows: (state the condition here).

I estimate that the amount of road repair tax that should be assessed for the next ensuing year is \$.....

I estimate that the amount of highway improvement tax that should be assessed for the next ensuing year is \$.....

The following improvements, in my opinion, are necessary to be made on the roads and bridges in said township, viz.: (state the improvements), and the expense of making such improvements I estimate to be \$.....

Given under my hand this ..... day of ..... A. D., 19..

Commissioner of Highways of the Township of .....

No. 17.

## NOTICE TO REMOVE FENCE TO PERMIT WORKING OF HIGHWAY.

[Section 105.]

To Mr. S. W. . . .

Take notice, That the highway in the township of ....., in the county of ....., adjoining your land, and running as follows: Commencing at (here describe highway) has, by reason of the falling and washing away of the bank on that portion of said highway adjoining your land, at a place (set forth the place washed away) become reduced in width to less than fifty feet, and you are therefore hereby notified, that you are required to remove the fence (hedge, or other structure forming the enclosure) back from the bank far enough to admit of the opening and working of said highway to the full width of fifty feet, and that upon failure to comply therewith, within thirty days after service of this notice upon you, I shall proceed to remove the same.

Dated this ..... day of ....., A. D. 19..

Commissioner of Highways of the Township of .....

## No. 18.

## NOTICE OF COMMISSIONER'S INTENTION TO OPEN ROAD IN REAR OF DWELLING.

[Section 107.]

Mr. S.. W..:

Take notice, That the highway in the township of ....., running on the side of the dwelling house now occupied by you and situate on the (here describe the land), cannot by reason of the proximity of said dwelling to the river on the opposite side of said highway be opened and maintained to the width of thirty-five feet; now, therefore, you are hereby notified that it is my intention to open a highway at the rear of said dwelling house, the full width of fifty feet or over, unless within thirty days after service of this notice upon you, said dwelling house shall be moved so as to enable me to open and maintain said road the full width of thirty-five feet.

Given under my hand, this ..... day of ....., A. D. 19..

.....  
Commissioner of Highways of the Township of .....

## No. 19.

## ORDER OF COMMISSIONER OF HIGHWAYS TO REMOVE OBSTRUCTIONS IN CASES OF ENCROACHMENT.

[Section 111.]

COUNTY OF ....., } ss.  
Township of ....., }

The undersigned, commissioner of highways of the township of ....., county of ....., having ascertained that the public highway in said township, running (describe highway), is encroached upon the ..... side thereof, along the lands in the occupation of L.. M., by a (describe obstruction); erected by the (present or a former) occupant of the same; and having ascertained the ..... bounds and limits thereof to be upon and according to the following line, viz.: Beginning (describe the line of the highway) and having ascertained that all that narrow strip or piece of land which lies (under said obstruction, or all that strip of land under said obstruction and between said obstruction and the line of said highway), is a part of said highway: It is therefore ordered by said commissioner of highways that said (obstruction) be removed, so that the said highway shall be open and unobstructed, and of the width originally intended, which was ..... rods.

Given under my hand, this ..... day of ....., A. D. 19..

.....  
Commissioner of Highways of the Township of .....

[A copy of this order is to be served upon the party encroaching, with the following notice.]

To Mr. L.. M..:

Take notice, That an order, a copy of which is herewith served upon you, has been made by me, and you are required according to the statute in such case made and provided, to remove the (obstruction) therein mentioned within thirty days after service upon you of a copy of said order.

Dated this ..... day of ....., A. D. 19..

.....  
Commissioner of Highways of the Township of .....

## No. 20.

NOTICE BY TOWNSHIP BOARD SUBMITTING QUESTION OF RAISING TAX  
FOR BRIDGES TO VOTE OF ELECTORS.

[Section 124.]

## NOTICE.

Notice is hereby given, that at (a special, or, the next annual), township meeting of the township of ....., in the county of ....., to be held on the ..... day of ....., A. D. 19.., there will be submitted to the qualified electors of said township, a proposition to raise by tax in said township the sum of ..... hundred dollars, for the purpose (of building, rebuilding or repairing) a bridge, to be expended in (building, rebuilding or repairing), a bridge over the ..... river on the line of the highway running (here describe the highway) at the place where said highway crosses said river. Said vote shall be by ballot, and such ballots shall read "For the bridge tax" or "Against the bridge tax."

Dated this ..... day of ....., A. D. 19..

.....  
Township Clerk of the Township of .....

This form may be altered to apply to an exigency road tax.

## No. 21.

## NOTICE TO OWNER OR OCCUPANT OF APPLICATION FOR PRIVATE ROAD.

[Section 154.]

To Mr. R.. S.:

Take notice, That application has been made to me, the undersigned commissioner of highways for the township of ....., by C.. D., to lay out a private road as follows: (here describe the road) being on the lands now owned and occupied by you, and that you are notified to meet me on the ..... day of ....., A. D. 19.., at 10 o'clock in the forenoon, at the residence of E.. F., in said township, for the purpose of aiding in striking a jury to determine as to the necessity of such road and the damages resulting therefrom, in case such road shall be deemed necessary.

Dated this ..... day of ....., A. D. 19..

.....  
Commissioner of Highways of the Township of .....

NOTE.—This notice must fix the time for meeting not more than ten nor less than five days from time of service of the notice.

## No. 22.

## CITATION FOR JURY FOR PRIVATE ROAD.

[Section 155.]

COUNTY OF ....., }  
Township of ....., } ss.

You (here give names of persons selected as jury on private road) are hereby cited to appear before me, commissioner of highways of the township of ..... aforesaid, at the residence of E.. F., in said township, on the ..... day of ....., A. D. 19.., at 10 o'clock in the forenoon of said day, well and truly to examine and determine as to the necessity of laying out a private road running

(here describe the road as in the application) being on the lands now owned and occupied by C.. D., and in case you shall decide such road to be necessary, to appraise the damages of the owner or occupant of said land by reason of laying out said road.

Dated this ..... day of ....., A. D. 19..

.....  
Commissioner of Highways of the Township of .....

No. 23.

CERTIFICATE OF JURY ON PRIVATE ROAD.

[Section 157.]

COUNTY OF ....., }  
Township of ....., } ss.

We, the undersigned, a jury selected to determine as to the necessity of laying out a private road as hereinafter described, and to assess the damages therefor, having been duly cited to appear pursuant to a citation issued by A.. B., commissioner of highways of said township, met at the residence of C.. D., in said township, on the day of the date hereof, and having been duly sworn by said commissioner as required by law, and having viewed the premises, do hereby certify that we have determined that it is necessary that a private road should be laid out running as follows. (here describe the road) being over the lands owned and occupied by C.. D., and that we appraise the damages to said C.. D. by reason of the laying out of said road over his land at the sum of ..... dollars.

Given under our hands this ..... day of ....., A. D. 19..

(To be signed by jurors.)

No. 24.

HIGHWAY COMMISSIONER'S BOND.

[Section 177.]

Know all men by these presents, That we A.. B., of the township of ....., as principal, and C.. D. and E.. F., of the township of ..... in the county of ....., as sureties are held and firmly bound unto the township of ..... in said county, in the penal sum of one thousand dollars, to be paid to the said township of ....., to which payment, well and truly to be made, we bind ourselves and our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this ..... day of ....., A. D. 19..

Whereas, The above bounden A.. B. has been duly elected commissioner of highways in and for the said township of ....., to serve for the term of one year from the first Monday in April, in the year 19.. (if it be a case of vacancy, say "to serve until the ..... day of ....., A. D. 19.."), and until a successor shall be duly elected and qualified:

Now, therefore, The condition of this obligation is such, that if the said A.. B. shall faithfully perform the duties of his office, and faithfully disburse all moneys that may come into his hands by virtue of his office, then the above obligation to be void and of no effect, otherwise to remain in force.

.....[Seal.]  
.....[Seal.]  
.....[Seal.]

Signed, sealed and delivered in presence of

.....  
.....

STATE OF MICHIGAN,        }  
County of .....,        } ss.

C.. D.. and E.. F.., sureties on the foregoing bond of A.. B.., as commissioner of highways in and for the township of ..... in said county, being duly sworn, depose and say, each for himself, that he is worth the sum hereinafter specified, viz.: The said C.. D.., the sum of \$....., and the said E.. F.., the sum of \$....., in unincumbered property, not exempt from execution under the laws of this State, after payment of all just debts, claims and liabilities. And further deponents say not.

C.. D..  
E.. F..

Subscribed and sworn to before me, this }  
..... day of ....., A. D. 19.. }

Notary Public.

My commission expires .....

I approve of the above bond and of the sureties thereon.

Supervisor or Township Clerk.

This form of bond may be altered for an overseer's bond.

NOTE.—Sureties on any official bond must justify their pecuniary responsibility in amount, in the aggregate equal to the penal sum of the bond, which justification must be endorsed on or attached to the bond, and without which the bond cannot legally be received or approved. Receiving or approving an official bond not having such justification of sureties endorsed thereon or attached thereto, is a misdemeanor and may be punished as such, and the person or persons guilty of such misdemeanor shall be liable for all damages sustained by reason of such defective bond. See sections 150-161, C. L., 1897.

No. 25.

# ORDER ON TOWNSHIP TREASURER BY COMMISSIONER OF HIGHWAYS.

[Section 180.]

To the Treasurer of the Township of .....

Pay to C.. D.., or order ..... dollars, payment in full for materials furnished by him for (state for what).

Witness my hand, this ..... day of ....., A. D. 19..

Commissioner of Highways of the Township of .....

Countersigned:

Township Clerk.

[The following should accompany the foregoing.]

The undersigned, commissioner of highways of the township of ....., doth hereby certify that the materials mentioned in the accompanying order were actually furnished and used for (state whatever the order is drawn for).

Witness my hand, this ..... day of ....., A. D. 19..

Commissioner of Highways of the Township of .....

No. 26.

## RELEASE OF RIGHT OF WAY.

[Section 70.]

For and in consideration of the sum of ..... dollars, to me in hand paid by the board of county road commissioners of the county of ..... State of Michigan, I ....., of ....., do hereby convey and release to the county of ....., aforesaid, all of my right, title and fee in and to so much of the following described tract or parcel of land owned (or occupied) by me as is necessary for a proposed road in said county, hereinafter described, to wit: (give description of the tract).

This release is for the sole and only purpose of conveying to the said county of ..... the right of way over so much of the said described lands, as may be necessary for the use and benefit of the public for the purpose of said proposed road, petition for which in writing has been made on the ..... day of ....., A. D. 19.., by the board of county road commissioners of said county, and the necessity for which has been determined by the board of county road commissioners in their petition bearing date the ..... day of ....., A. D. 19.., in which said petition the route and course and width of said road are described as follows, to wit: (give the road as surveyed).

This conveyance is based upon the above described line of route, and includes a release for all claims to damages in any way arising from or incident to the opening and maintaining of said road across said premises.

Witness my hand and seal, this ..... day of ....., A. D. 19..

In presence of

.....  
.....

[Two witnesses.]

.....[L. S.]

STATE OF MICHIGAN,        }  
County of .....,        } ss.

Be it remembered, That on this ..... day of ....., A. D. 19.., before me, a ..... in said county, personally appeared ....., to me known to be the person who executed the foregoing instrument, and acknowledged the execution thereof as ..... free act and deed.

.....  
Notary Public.  
My commission expires .....

NOTE.--If the land taken is a homestead, the release must be signed by the wife, if any.





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